

STEPTOE & JOHNSON LLP
ATTORNEYS AT LAW

227148

David H. Coburn
202.429.8063
dcoburn@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
steptoe.com

May 25, 2010

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
MAY 25 2010
Part of
Public Record

**Re: MC-F-21035, Stagecoach Group plc and Coach USA, Inc., et al.—
Acquisition of Control — Twin America, LLC**

Dear Ms. Brown:

For the Board's information, Applicants in this proceeding have attached to this letter a copy of the May 21, 2010 reply memorandum, affidavit and related exhibits filings made with the New York State Supreme Court on behalf of those of the Applicants party to the proceeding in that court styled as *Continental Guest Services Corporation v. International Bus Services, Inc., et al.*, No. 600643/10 (Sup. Ct. filed March 10, 2010). This reply has been filed with the Court in advance of a May 27, 2010 hearing on the motion of Continental Guest Services Corporation ("CGSC") for a preliminary injunction against certain actions of Twin America relative to its arrangements with CGSC and on the motion of the Defendants in that proceeding to dismiss the lawsuit. The reply is addressed to the submissions made to the Court by CGSC on May 7, a copy of which CGSC filed with this Board on May 10.

In CGSC's May 7 filing with the New York Court, that party took issue with this Board's jurisdiction over Twin America, asserting that Twin America does not operate in interstate commerce. CGSC did not make that assertion or any other assertion in any written evidence or argument submitted to this Board because it chose to bypass the opportunities provided by this Board to submit written evidence and arguments. Instead, after the close of the evidentiary comment period in this proceeding, CGSC chose to appear at the oral argument, and to use that argument to make several allegations that Applicants had no opportunity to rebut during the course of this Board proceeding. The unfairness to Applicants created by this situation is obvious, as is the remedy – the Board should not credit any of those allegations given CGSC's

Cynthia T. Brown
May 25, 2010
Page 2

unexcused failure to file comments or otherwise participate during the evidentiary phase of this proceeding.

With respect to CGSC's assertion that Twin America does not operate in interstate commerce, the attached reply argues that the record in this proceeding already contains substantial contrary evidence, *e.g.*, that Twin America conducts interstate charters, transports passengers between New Jersey hotels and New York, and maintains (under arrangements in place for several years that Twin America inherited from its founders) through route and other arrangements with interstate carriers for the transportation of passengers from various points outside of the New York area to/from New York City. In regard to its charter operations, Twin America continues to operate and grow this part of its business with the motorcoaches contributed from the outset by International Bus Services, Inc. ("IBS"). In March 2010, Twin America conducted 15 interstate charters, 17 in April and 12 through the first three weeks in May. These charters, conducted under Twin America's FMCSA-issued charter operating authority, have taken passengers between New York City and places such as Atlantic City, casinos in eastern Connecticut and Washington, DC, similar to charters conducted by applicant International Bus Services with the same buses prior to the formation of Twin America. Further, Twin America will be obtaining new motorcoaches available for charter use during June of this year, which will enhance its ability to grow this element of its business.

CGSC also repeats in its recent New York court filings the same allegation that NYSAG has made about Twin America's initiation of this application proceeding as a means to circumvent the NYSAG antitrust investigation into the formation of Twin America. As the attached reply makes clear, that claim was not accurate when made by NYSAG, and it is no more true when made by CGSC. The record before the Board contains unrefuted testimony that Twin America and its co-applicants retained counsel to determine whether an application was necessary and then to prepare such an application in June 2009, *well prior* to the time that NYSAG served its subpoenas at the end of July 2009. Further, CGSC fails to explain why applicants were not legally obligated to file an application under Section 14303 seeking Board authority to control Twin America given the undisputed facts surrounding the control of Twin America.

Finally, Applicants offer the following in reply to CGSC's May 12, 2010 letter to this Board regarding the confidential exhibit (exhibit 1 to the Chan Declaration) that CGSC attached to its May 7 Court submission and to its May 10 filing of that submission with the Board. CGSC claimed in its May 12 letter that Applicants were seeking protection of that document at the Board, but had not tried to seal the Court filing. However, the fact is that Twin America counsel wrote to counsel for CGSC on May 10 to provide him with copies of prior correspondence concerning the confidential exhibit and to ask him to remove that exhibit and references to it from his submissions to the Board and the Court in light of the protective order. See attached May 10 letter. CGSC counsel refused to do so. As a consequence, on May 21, 2010 applicant IBS (a co-defendant in the New York court action) filed the attached motion with

Cynthia T. Brown
May 25, 2010
Page 3

the New York State court to protect the confidentiality of the document by sealing the relevant information from public disclosure.

In short, CGSC has opted not only to circumvent this Board's jurisdiction and processes -
- by pursuing a state court lawsuit to challenge, among other things, Twin America's formation.-
- but also to ignore the protective order issued in this proceeding, effectively deciding for itself to nullify the confidentiality designation assigned by Applicants to the document at issue. Applicants submit that for the reasons stated the Board should neither: (1) credit the arguments that CGSC has made nor (2) post on the Board's website CGSC's May 7 filing until that entity removes the confidential document and references to it.

Respectfully submitted,



David H. Coburn
Attorney for Applicants Stagecoach Group
plc; Stagecoach Transport Holdings plc.;
SCUSI Ltd.; Coach USA Administration,
Inc.; Coach USA, Inc.; International Bus
Services, Inc.; CitySights Twin, LLC; Mr.
Zev Marmurstein; and Twin America, LLC

cc: All parties of record
Mr. Mark Berman

**MAY 21, 2010 REPLY OF DEFENDANTS IN
CGSC VS. INTERNATIONAL BUS SERVICES, ET AL.**

**By order of Justice Ramos, these motion papers
may not be taken apart or otherwise tampered with.**

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

CONTINENTAL GUEST SERVICES CORPORATION,

Plaintiff,

- against -

**INTERNATIONAL BUS SERVICES, INC. d/b/a GRAY
LINE NEW YORK, CITY SIGHTS TWIN, LLC d/b/a
CITY SIGHTS NEW YORK, TWIN AMERICA, LLC,
BATTERY PARK HOTEL MANAGEMENT, LLC
HAMPTON INN TIMES SQUARE NORTH, HILTON
GARDEN INN TIMES SQUARE, NEW YORK WEST
35TH STREET HGI, ON THE AVE HOTEL, THE
PARAMOUNT HOTEL NEW YORK, PARK CENTRAL
HOTEL (DE), LLC, THIRTY EAST 30TH STREET
OWNER, LLC, TIMES SQUARE HOTEL OPERATING
LESSEE LLC, LEXINGTON HOTEL, LLC, W2001
METROPOLITAN HOTEL OPERATING LESSEE, LLC,
and HIGHGATE HOTELS, LP,**

Defendants.

Index No. 600643/10

Justice: Charles E. Ramos, J.S.C.

**Commercial Division of the Supreme
Court of the State of New York**

**REPLY MEMORANDUM OF LAW IN SUPPORT OF BUS
DEFENDANTS' MOTION TO DISMISS AND OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

**Michael P.A. Cohen (*pro hac vice*)
PAUL, HASTINGS, JANOFSKY &
WALKER, LLP
875 15th Street N.W.
Washington, D.C. 20005
Telephone: (202) 551-1880
Facsimile: (202) 551-0280
michaelcohen@paulhastings.com**

Kenneth M. Breen
William A. Novomisle
PAUL, HASTINGS, JANOFSKY &
WALKER, LLP
Park Avenue Tower
75 E. 55th Street
First Floor
New York, NY 10022
Telephone: (212) 318-6344
Facsimile: (212) 230-7828
kennethbreen@paulhastings.com

ATTORNEYS FOR TWIN AMERICA,
LLC AND CITYSIGHTS TWIN, LLC

Alan G. Katz
SARETSKY, KATZ, DRANOFF & GLASS
LLP
475 Park Avenue South
New York, NY 10016
Telephone: (212) 973-9797
Facsimile: (212) 973-0939
akatz@skdglaw.com

ATTORNEY FOR CITYSIGHTS TWIN,
LLC

Richard M. Steuer
MAYER BROWN LLP
1675 Broadway
New York, NY 10019
Telephone: (202) 506-2530
Facsimile: (212) 849-5530
rsteuer@mayerbrown.com

ATTORNEY FOR INTERNATIONAL
BUS SERVICES, INC.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. CGSC HAS COMPLETE ACCESS TO TWIN AMERICA TICKETS AND HAS NEITHER PLED NOR PRESENTED CLEAR AND CONVINCING (OR ANY) PROOF OF IRREPARABLE HARM	5
II. CGSC'S CLAIM THAT TWIN AMERICA WILL "LOCK OUT" COMPETITION THROUGH A VERTICAL MONOPOLY IS ALL BUNK	7
A. CGSC's "Vertical Monopoly" Theory Makes No Sense When 90% Of Twin America Bus Tickets Are Sold On The Street And Over The Internet	8
B. It Is CGSC's Burden To Plead Interchangeability For Its "Hotel Distribution" And "Double-Decker Tour" Markets	11
C. Twin America's Unilateral Conduct Is Not Actionable Under The Donnelly Act Nor Is "Attempt"	17
III. CGSC'S CLAIM THAT TWIN AMERICA IS A MONOPOLY: THE CASE BEFORE THE STB	19
IV. CONCLUSION	24

TABLE OF AUTHORITIES

CASES	PAGE(S)
<i>Abe's Rooms, Inc. v. Space Hunters, Inc.</i> , 38 A.D.3d 690, 833 N.Y.S.2d 138 (2d Dep't 2007).....	18
<i>Ansell Inc. v. Schmid Labs.</i> , 757 F. Supp. 467 (D.N.J.), <i>aff'd mem.</i> , 941 F.2d 1200 (3d Cir. 1991).....	14
<i>Arnold Chevrolet LLC v. Tribune Co.</i> , 418 F. Supp. 2d 172 (S.D.N.Y. 2006)	12
<i>B.V. Optische Industrie de Oude Delft v. Hologic, Inc.</i> , 909 F. Supp. 162 (S.D.N.Y. 1995)	12
<i>Bayer Schera Pharma AG v. Sandoz, Inc.</i> , Nos. 08-CIV-03710 & 08112, 2010 WL 1222012 (S.D.N.Y. Mar. 29, 2010).....	12
<i>Belfiore v. N.Y. Times Co.</i> , 654 F. Supp. 842 (D. Conn. 1986), <i>aff'd</i> , 826 F.2d 177 (2d Cir. 1987)	9
<i>Benjamin Kurzban & Son, Inc. v. Bd. of Educ.</i> , 129 A.D.2d 756, 514 N.Y.S.2d 749 (2d Dep't 1987).....	6
<i>Bevilacqua v. Ford Motor Co.</i> , 125 A.D.2d 516, 509 N.Y.S.2d 595 (2d Dep't 1986).....	18, 19
<i>Bodie-Rickett & Assocs. v. Mars, Inc.</i> , 957 F.2d 287 (6th Cir. 1992)	9, 10
<i>Chapman v. N.Y. State Div. for Youth</i> , 546 F.3d 230 (2d Cir. 2008), <i>cert. denied</i> , 130 S. Ct. 552 (2009).....	11
<i>Columbia Broad. Sys., Inc. v. FTC</i> , 414 F.2d 974 (7th Cir. 1969)	14
<i>Conte v. Newsday, Inc.</i> , No. 06-CV-4859, 2010 U.S. Dist. LEXIS 28502 (E.D.N.Y. Mar. 25, 2010).....	11
<i>E & L Consulting, Ltd. v. Doman Indus. Ltd.</i> , 472 F.3d 23 (2d Cir. 2006)	9
<i>FTC v. Staples</i> , 970 F. Supp. 1066 (D. D.C. 1997).....	14

TABLE OF AUTHORITIES
(continued)

	Page(s)
<i>GFI Sec. LLC v. Tradition Asiel Sec. Inc.</i> , No. 601183/08, 2008 WL 4559921 (Sup. Ct. N.Y. Co. July 28, 2008), <i>aff'd</i> , 61 A.D.3d 586, 878 N.Y.S.2d 689 (1st Dep't 2009)	7
<i>Gianna Enters. v. Miss World (Jersey) Ltd.</i> , 551 F. Supp. 1348 (S.D.N.Y. 1982)	13
<i>Global Disc. Travel Servs., LLC v. TWA</i> , 960 F. Supp. 701 (S.D.N.Y. 1997)	11, 16
<i>Gregory Mktg. Corp. v. Wakefern Food Corp.</i> , 787 F.2d 92 (3d Cir. 1986)	9, 10
<i>Henry v. Chloride, Inc.</i> , 809 F.2d 1334 (8th Cir. 1987)	14
<i>Kramer v. Pollock-Krasner Found.</i> , 890 F. Supp. 250 (S.D.N.Y. 1995)	13
<i>Lopresti v. Mass. Mut. Life Ins. Co.</i> , No. 12719/04, 2004 WL 2364916 (Sup. Ct. Kings Co. Oct. 19, 2004), <i>aff'd</i> , 30 A.D.3d 474, 820 N.Y.S.2d 275 (2d Dep't 2006)	12
<i>Mathias v. Daily News, L.P.</i> , 152 F. Supp. 2d 465 (S.D.N.Y. 2001)	15, 16, 17
<i>McCagg v. Marquis Jet Partners, Inc.</i> , No. 05-CV-10607, 2007 WL 2454192 (S.D.N.Y. Mar. 29, 2007)	11
<i>Omega Envtl., Inc. v. Gilbarco, Inc.</i> , 127 F.3d 1157 (9th Cir. 1997)	10
<i>Pepsico, Inc. v. Coca-Cola Co.</i> , 315 F.3d 101 (2d Cir. 2002)	10
<i>Photovest Corp. v. Fotomat Corp.</i> , 606 F.2d 704 (7th Cir. 1979)	14
<i>Re-Alco Indus., Inc. v. Nat'l Ctr. for Health Educ., Inc.</i> , 812 F. Supp. 387 (S.D.N.Y. 1993)	11
<i>Rockland Dev. Assocs. v. Vill. of Hillburn</i> , 172 A.D.2d 978, 568 N.Y.S.2d 490 (3d Dep't 1991)	6

TABLE OF AUTHORITIES
(continued)

	Page(s)
<i>Smith & Johnson, Inc. v. Hedaya Home Fashions, Inc.</i> , No. 96 Civ. 5821, 1996 WL 737194 (S.D.N.Y. Dec. 26, 1996), <i>aff'd mem.</i> , 125 F.3d 844 (2d Cir. 1997)	11
<i>Steiner v. Lozyniak</i> , 1997 N.Y. Misc. LEXIS 738 (Sup. Ct. N.Y. Co. June 19, 1997).....	7
<i>Texaco Inc. v. Dagher</i> , 547 U.S. 1 (2006)	17, 18
<i>Theatre Party Assocs. v. Shubert Org., Inc.</i> , 695 F. Supp. 150 (S.D.N.Y. 1988).....	16, 17
<i>U.S. Horticultural Supply, Inc. v. Scotts Co.</i> , No. Civ. A.03-773, 2004 WL 1529185 (E.D. Pa. Feb. 18, 2004)	10
<i>United States v. E.I. du Pont de Nemours & Co.</i> , 351 U.S. 377 (1956)	15
<i>Wider v. Heritage Maint., Inc.</i> , 14 Misc. 3d 963, 827 N.Y.S.2d 837 (N.Y. Sup. Ct. 2007).....	13
STATUTES	
15 U.S.C. § 15	10
15 U.S.C. § 26	10
N.Y. Gen. Bus. Law § 340(5).....	18
OTHER AUTHORITIES	
N.Y. Comp. Codes R. & Regs, tit. 22, § 202.8	13

Plaintiff's entire argument for irreparable harm and indeed its entire theory of this case rests on *access* to Twin America bus tickets. So it goes: *if* Twin America does not give Continental Guest Services Corporation ("CGSC") access to double-decker bus tickets, 43 New York City hotels will terminate their concierge agreements with CGSC putting it out of business, leaving Twin America with the potential to monopolize hotel distribution and a prophesized ability to block any new double-decker bus transportation tour company from starting a competing tour service in New York City. The "spigot" to Twin America tickets is the sole basis for plaintiff's claim to irreparable harm. It is the only asserted basis behind Twin America's hypothetical ability to monopolize a theoretical market for hotel distribution of double-decker transportation tour tickets. It is the only imminent threat CGSC asserted to secure a Temporary Restraining Order ("TRO") on March 12 and since.

But the house of cards CGSC has invented collapses from two fatal, uncontested facts. First is access itself. *CGSC has never been without access to Twin America tickets, nor can it ever be without access to Twin America tickets.* CGSC can provide Twin America tickets to hotel patrons to its heart's delight. Twin America would love nothing more and has never asked for anything different. It can arrange and print ticket vouchers for hotel guests directly from the Internet at any of its desks at any hotel in the city, as can any concierge at any of the hundreds of other New York City hotels that CGSC does not "control."

CGSC utterly fails to rebut this essential point, because CGSC is really complaining about the commission payment it currently receives to sell tickets, not access to the tickets. Indeed it would be interesting to see whether double-decker bus transportation tours would be in the "independent best interests" of CGSC hotel guests, as Ms. Zhang testifies, if CGSC did not receive a sales commission for the tickets. Notably CGSC does not even attempt to state a case

for irreparable harm based on the commissions, because the CGSC commissions at stake for the seven hotels in question in this case are estimated to be approximately \$370,000 – nowhere close to 95% of the “tens of millions” of revenues CGSC asserted it earns at the hearing on the Temporary Restraining Order.

For this reason CGSC notably fails to plead that loss of the Twin America sales commissions will ruin it, let alone support such pleading with clear and convincing proof of financials required by the case law. CGSC has the Twin America tickets. It can always have the tickets and will never be without the tickets. CGSC has not and cannot be irreparably harmed under its own theory of the case in any way. But it is not entitled to a commission for the tickets, based on any contract or any law or any argument proffered in this case.

The second silver bullet is the fact that *more than 90% of Twin America sales occur through ticket agents on the street, visitor centers, Internet sites, travel agents and other third parties, NOT HOTELS*. (The largest single source of ticket sales is the union employee street ticket sellers CGSC describes as untrusted “hawkers.”) (See Nov. 17, 2009 Willig ¶ 61; Apr. 8, 2010 Marmurstein Affirm. ¶ 22.) At the Temporary Restraining Order hearing CGSC created and allowed this court to labor under the misimpression that hotels were the primary outlet for Twin America tickets. Nothing could be further from the truth. This uncontested fact exposes the CGSC theory that Twin America is trying to take over New York City hotel concierge desks to lock out double-decker tour bus competition for exactly what it is: bunk.

Regardless of how many hotel rooms CGSC asserts it controls (independent reports put the figure at 37% not the 45% CGSC claims), neither CGSC nor hotels are essential to a double-decker or any other transportation tour service. CitySights itself started its double-decker tour business in 2005 without CGSC hotels, which exclusively marketed Gray Line for the first two

years CitySights was in business. Once CGSC did agree to carry CitySights tickets, it accounted for *less than 5%* of CitySights sales in 2007 and 2008 and of Twin America sales from April 2009 through today. (See May 18, 2010 Marmurstein Affirm. ¶ 13; see also Apr. 8, 2010 Marmurstein Affirm. ¶ 22.)

The fact that nearly all NY tourists who ride Twin America buses purchase their tickets from street sellers, travel agents, visitor centers, other third parties and the Internet also unwinds CGSC's allegation that hotels are a unique antitrust distribution market. Presumably these visitors to New York stay in hotels, and the fact that 90% of them walk right past the hotel concierge desk and purchase their tickets somewhere else (or purchased the tickets somewhere else before they arrived in New York) means that the "somewhere elses" have to be included in the distribution market. The market definition test focuses on the interchangeability of the outlets where passengers purchase the tickets – the very pleading and proof failure CGSC commits.

CGSC is right about one thing – Twin America is not 100-years old and does not have market power over concierge desks, in fact it does not have any concierge desks. The Twin America story instead is one of remarkable innovation and efficiency. It is the story of a start-up called CitySights that in four years grew from eight to seventy buses operating double-decker transportation tours. That growth occurred through marketing innovations and route innovations that allowed CitySights to serve more passengers with greater frequency operating fewer buses. When this nation's economy took one of its worst turns in history, CitySights brought these same innovations and efficiencies to its merger with Gray Line. That efficiency is not conjecture but a proven case – it is the very case Twin America has presented to the federal Surface Transportation Board ("STB") under that agency's exclusive jurisdiction to decide the propriety

of the merger.

To that end, unlike Dr. Kitty Kay Chan ("Chan"), the agricultural economist the New York State Attorney General ("NYSAG") employs full time and presented in its STB filings, Twin America put into evidence two independent expert reports by Princeton University Professor Robert D. Willig, Ph.D. Dr. Willig is the former Deputy Assistant Attorney General for the United States Department of Justice Antitrust Division, where he led a team of more than 50 professionals evaluating the competitive impacts of mergers. He has experience evaluating dozens of transportation industry mergers in particular.

Looking at the actual effects of the merger from its actual operations over the past year, Dr. Willig concluded the merger has resulted in substantial cost savings, increased service and frequency of service to passengers using fewer buses. Dr. Willig concluded the merger presents no danger to competition because there are no entry barriers to starting a competing double-decker transportation tour service, as the story of CitySights conclusively demonstrates. And he noted the myriad market factors that constrain prices for double-decker bus tours, explaining Dr. Chan failed to follow the test for defining an antitrust market. Because CGSC rests its entire challenge to the Twin America merger on the NYSAG's comments and Dr. Chan's economic report in the STB proceeding, Twin America attaches Dr. Willig's expert reports to this reply for the court's full consideration if needed. (*See* Nov. 17, 2009 Willig, attached as Exhibit A; Mar. 10, 2010 Willig, attached as Exhibit B.)

The very fact, moreover, that CGSC is attempting to re-litigate the merger in this court through filings made over the last year at the STB makes the very point Twin America raised in its motion to dismiss. The propriety of the Twin America merger is before the STB, a federal agency with exclusive jurisdiction to approve the transaction. The STB conducted a hearing on

April 27. Both the NYSAG and CGSC participated in that hearing, acknowledging that the STB has the authority to decide its own jurisdiction over the matter. The merger of Twin America is a question entirely and exclusively before the STB.

There is no monopoly in this case. There is no “vertical monopoly” in this case – not now and it is not possible by any stretch of economic logic. And there is no threat of imminent, irreparable harm to the universal access to Twin America tickets that CGSC has always had and so emphatically claims it needs. The only threat to CGSC is a new competitor that seeks to translate its innovations, technologies and successes starting a bus tour company to a new concierge business. The last thing CGSC wants is competition, innovation and new ideas in the 100-year franchise it claims to have locked up. This case is about CGSC’s attempts to block new competition to protect an incumbent – itself. The relief CGSC requests and to date has secured is adversely impacting competition not protecting it. This court should end this case now.

I. CGSC HAS COMPLETE ACCESS TO TWIN AMERICA TICKETS AND HAS NEITHER PLED NOR PRESENTED CLEAR AND CONVINCING (OR ANY) PROOF OF IRREPARABLE HARM

CGSC’s sole claim of “irreparable harm” rests entirely on access to Twin America tickets. It claims that “without the ability to sell double-decker sightseeing tour bus tickets, CGSC would no longer be a ‘full service’ concierge, and the obvious and inevitable result will be Plaintiff’s termination.” (Pl. Opp. Mem. at 4; *see* Transcript of TRO Hearing 10:11-13 (“Right now we are here on a TRO, preliminary injunction. We don’t want them to shut off the sales of these tickets”); *id.* 12:24-26 (“What I want is to ensure that they continue to permit us to sell their double decker sightseeing tour tickets.”)).

CGSC has never lacked the ability to provide hotel guests with Twin America tickets. The tickets are ubiquitous – they are available instantly on the Internet, through street ticket sellers and Twin America visitor centers. (*See* Apr. 8, 2010 Marmurstein Affirm. ¶¶ 12, 22.)

Any hotel concierge desk in New York City can offer Twin America bus tours to hotel guests, either by directing the guest to a location where double-decker tickets are sold or by purchasing the tickets over the Internet right there at the concierge desk. (*Id.*) CGSC is not now, never has been and cannot be foreclosed from access to double-decker bus tour tickets.

Fatally conceding the point, CGSC now asserts that obtaining a "purchase confirmation" off the Internet is not the equivalent of providing a patron with a Twin America ticket. (*See* May 7, 2010 Zhang Aff. ¶¶ 93-96.) CGSC is wrong. Printed Internet vouchers are precisely the same as the vouchers CGSC (and other hotels) currently use – both must be taken to a Twin America visitor center (or a Twin America ticket agent on the street) and exchanged for a bus ticket. (*See* May 18, 2010 Marmurstein Affirm. ¶ 11; CGSC Voucher, attached as Exhibit C; Apr. 8, 2010 Marmurstein Affirm ¶ 14.)

In short, CGSC obtained a TRO based on a false pretense it can no longer perpetrate and in fact now concedes. It had, has and will have full instant anytime access to Twin America tickets. CGSC's cause for injunctive relief thus disappears. Notably it has not asserted any continued right to sales commissions for Twin America tickets, nor can it.

Stripped of its access argument, CGSC's bus tour ticket sales commissions for the seven Highgate hotels in question are completely quantifiable: based on estimated commission on actual sales made by CGSC for the period April 2009 through February 2010, apportioned pro rata to each of CGSC's 43 hotels, CGSC would have received approximately \$370,000 in sales commissions at the seven hotels in question. And CGSC has not presented a single "financial statement or other evidence" to substantiate a claim that \$370,000 in lost sales commissions would force it into bankruptcy. *Rockland Dev. Assocs. v. Vill. of Hillburn*, 172 A.D.2d 978, 979, 568 N.Y.S.2d 490, 491 (3d Dep't 1991); *see Benjamin Kurzban & Son, Inc. v. Bd. of Educ.*, 129

A.D.2d 756, 757, 514 N.Y.S.2d 749, 750 (2d Dep't 1987) (absent financial statements or other evidence, plaintiff's claim that it "would be forced to go out of business" was insufficient to establish irreparable harm); *GFI Sec. LLC v. Tradition Asiel Sec. Inc.*, No. 601183/08, 2008 WL 4559921, at *9 (Sup. Ct. N.Y. Co. July 28, 2008) (holding no irreparable harm because "the amount of commissions [is] calculable"), *aff'd*, 61 A.D.3d 586, 878 N.Y.S.2d 689 (1st Dep't 2009); *Steiner v. Lozyniak*, 1997 N.Y. Misc. LEXIS 738, at *6 (Sup. Ct. N.Y. Co. June 19, 1997) (Ramos, J.) ("Where money damages can provide adequate remedy, the injury is not irreparable.').

II. CGSC'S CLAIM THAT TWIN AMERICA WILL "LOCK OUT" COMPETITION THROUGH A VERTICAL MONOPOLY IS ALL BUNK

As an initial matter, the same universal, instant, ubiquitous access anyone anywhere has to Twin America tickets that negates CGSC's claimed irreparable harm also dooms its "vertical monopoly" theory. Twin America has not and cannot "leverage" itself into hotel concierge desks through its bus tour tickets. Indeed bus tours had nothing to do with Twin America's ability to secure contracts with the Highgate hotels in question. There is not a single record fact to show bus tour tickets give Twin America the power to take over concierge services in New York City.

In addition, CGSC's vertical monopoly theory makes no sense. Hotels are not a significant source for sale or distribution of bus tour tickets. CGSC's prophesized "takeover" would do nothing to lock out Twin America competitors. The very fact that almost all New York City visitors staying in hotels get their tickets somewhere else also demonstrates that CGSC has failed to plead lack of interchangeability requisite to its claim that hotels are a distinct antitrust distribution market. And CGSC has not overcome the complete bar to its Donnelly Act claims stemming from the fact that Twin America's conduct is unilateral, not bilateral.

A. CGSC's "Vertical Monopoly" Theory Makes No Sense When 90% Of Twin America Bus Tickets Are Sold On The Street And Over The Internet

CGSC's "vertical monopoly" theory is that Twin America will take over hotel concierge desks in order to block a new competitor from selling bus tickets. At the hearing on the Temporary Restraining Order, CGSC created a misimpression with the court that hotel concierge desks are "the primary manner in which these tickets get out to the public." (Transcript of TRO Hearing 16:23-24.) Nothing could be further from the truth.

Hotels comprise only 9.6% of total Twin America sales. (Apr. 8, 2010 Marmurstein Affirm. ¶ 22; *see also* May 18, 2010 Marmurstein Affirm. ¶ 13 (CGSC percentages are far less, below 5%)). The largest single source of Twin America's ticket sales are street ticket sellers – the hard-working union employees CGSC describes as untrustworthy "aggressive 'hawkers'" who are "sully[ing] the reputation of New York City and off putting to patrons." (Nov. 17, 2009 Willig ¶ 61; May 7, 2010 Zhang Aff. ¶¶ 84-85.)

Hotels are not necessary to start a double-decker sightseeing tour bus business. CitySights itself makes the point. CitySights began operations with eight double-decker buses and six motorcoaches. (Apr. 8, 2010 Marmurstein Affirm. ¶ 3.) CGSC refused to sell CitySights tickets for the first two years of its start-up operation. (*Id.* ¶ 4.) CitySights grew its business by selling tickets through street ticket sellers, international travel agents, tour operators, strategic through-ticket arrangements with other transportation carriers like Peter Pan Bus Lines and various international airlines, and over the Internet. (*Id.* ¶¶ 4-5.) Simply put, hotel sales are not necessary – and were never necessary – to compete. CGSC's entire theory is premised on this nonsensical assumption that has been undeniably refuted.

Lacking any credence to its "lock out" theory, CGSC's Donnelly Act claims fall apart. And CGSC entirely fails to address, let alone distinguish, case law holding a supplier does not

harm competition by entering a downstream business and selling its own products. *See E & L Consulting, Ltd. v. Doman Indus. Ltd.*, 472 F.3d 23, 29 (2d Cir. 2006) (no harm to competition from dealer termination because vertical arrangement provides an alleged monopolist with “no monopolistic benefit . . . it does not already enjoy” and arrangement would not harm competition if alleged monopolist “established its own in-house distribution system”); *Belfiore v. N.Y. Times Co.*, 654 F. Supp. 842, 847 (D. Conn. 1986) (“vertical integration into distribution,” even “by a monopolist . . . does not, without more, offend Section 2 of the Sherman Act”), *aff’d*, 826 F.2d 177 (2d Cir. 1987). The relief CGSC requests would restrain, not preserve competition.

Relatedly, CGSC fails to establish why it has antitrust standing to bring a vertical monopoly claim when it neither buys from Twin America nor competes with Twin America in light of the cases the Bus Defendants cited. *See Bodie-Rickett & Assocs. v. Mars, Inc.*, 957 F.2d 287, 291 (6th Cir. 1992) (broker/sales agent lacked antitrust standing); *Gregory Mktg. Corp. v. Wakefern Food Corp.*, 787 F.2d 92, 95 (3d Cir. 1986) (apple juice broker “not within that area of the economy . . . endangered by [the] breakdown of competitive conditions”) (citation omitted). The Bus Defendants agree antitrust standing is a multi-factor analysis and that purchaser or competitor status is not always requisite. It is, however, a critical factor in the analysis, because it is highly determinative of standing questions regarding the type of injury, remoteness of the injury and the most appropriate plaintiff to bring an antitrust action. *See Bodie-Rickett & Assocs. v. Mars, Inc.*, 957 F.2d at 290 (quoting *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519 (1983)).

Thus, in *Bodie-Rickett*, the Sixth Circuit held a broker who alleged it was wrongfully terminated when the defendant consolidated brokers to lock out competition did not have standing. *Id.* “Competing manufacturers and wholesale customers” were the intended targets

and more direct victims of the alleged conduct; the broker's injury was merely "incidental" to the alleged antitrust violation. *Id.* Likewise, in *Gregory Marketing*, the Third Circuit held the broker's injury did not stem from any alleged reduction in competition. 787 F.2d at 96. By contrast, in the unreported *U.S. Horticultural Supply* case CGSC cites, the distributor sold competing products under its own brand name and was an actual competitor to the defendant. *U.S. Horticultural Supply, Inc. v. Scotts Co.*, No. Civ. A.03-773, 2004 WL 1529185, at *4 (E.D. Pa. Feb. 18, 2004). In addition, the challenged written distributor agreement in question itself allegedly locked out competition, thus requiring the plaintiff's actual participation in the contested conduct. *Id.*

CGSC's general recitation of standing requirements under Clayton Act Section 4, 15 U.S.C. § 15, and Section 16, 15 U.S.C. § 26 does not address the substance of these cases. (See Pl. Opp. Mem. at 10-11.) In fact, the Clayton Act provides that no person has standing to sue for injunctive relief "against any common carrier subject to the jurisdiction of the Surface Transportation Board" 15 U.S.C. § 26. Twin America is a licensed common carrier subject to STB jurisdiction. (See Twin America's Common Carrier Certificate, attached as Exhibit D). And of course by filing this lawsuit in state court, CGSC consciously avoided federal antitrust statutes, likely because under the Clayton Act, there is no "market foreclosure" when a supplier can reach customers through alternate distribution channels. See *Omega Envtl., Inc. v. Gilbarco, Inc.*, 127 F.3d 1157, 1163 (9th Cir. 1997) (exclusive dealing arrangements could not foreclose from competition any part of the relevant market "[i]f competitors can reach the ultimate consumers of the product by employing existing or potential alternative channels of distribution"); *Pepsico, Inc. v. Coca-Cola Co.*, 315 F.3d 101, 110 (2d Cir. 2002) (same). Since

90% of Twin America's tickets reach the market in ways other than through hotel sales, CGSC could never satisfy this test.

B. It Is CGSC's Burden To Plead Interchangeability For Its "Hotel Distribution" And "Double-Decker Tour" Markets

CGSC asserts that "Bus Company Defendants have provided no affidavit evidence demonstrating that Plaintiff's market definitions are in any way improper[.]" (Pl. Opp. Mem. at 22) (emphasis omitted). But it is the plaintiff's affirmative duty to "define its market by reference to the rule of reasonable interchangeability." *Global Disc. Travel Servs., LLC v. TWA*, 960 F. Supp. 701, 705 (S.D.N.Y. 1997); see *McCagg v. Marquis Jet Partners, Inc.*, No. 05-CV-10607, 2007 WL 2454192, at * 5 (S.D.N.Y. Mar. 29, 2007) ("Antitrust plaintiffs are required to define the market according to the rules of 'interchangeability' and 'cross-elasticity'").

Contrary to CGSC's assertion that market definition cannot be determined on a motion to dismiss, New York state and federal courts routinely dismiss antitrust complaints for failing to plead interchangeable or substitute products. See *Chapman v. N.Y. State Div. for Youth*, 546 F.3d 230, 238-39 (2d Cir. 2008) (affirming dismissal on grounds proposed relevant market did not encompass all interchangeable substitute products), *cert. denied*, 130 S. Ct. 552 (2009); *Conte v. Newsday, Inc.*, No. 06-CV-4859, 2010 U.S. Dist. LEXIS 28502, at *37 (E.D.N.Y. Mar. 25, 2010) (courts dismiss antitrust cases involving a "failure even to attempt a plausible explanation as to why a market should be limited in a particular way") (citation omitted); *Smith & Johnson, Inc. v. Hedaya Home Fashions, Inc.*, No. 96 Civ. 5821, 1996 WL 737194, at *6 (S.D.N.Y. Dec. 26, 1996) ("Nowhere in the complaint [did] plaintiff explain why afghans are not interchangeable with other similar products, e.g., quilts, spreads, blankets and comforters, and why afghans constitute their own market"), *aff'd mem.*, 125 F.3d 844 (2d Cir. 1997); *Re-Alco Indus., Inc. v. Nat'l Ctr. for Health Educ., Inc.*, 812 F. Supp. 387, 391 (S.D.N.Y. 1993) ("If

a complaint fails to allege facts regarding substitute products, to distinguish among apparently comparable products, or to allege other pertinent facts relating to cross-elasticity of demand, as the complaint here fails to do, a court may grant a Rule 12(b)(6) motion”); *Lopresti v. Mass. Mut. Life Ins. Co.*, No. 12719/04, 2004 WL 2364916, at *3 (Sup. Ct. Kings Co. Oct. 19, 2004) (dismissing Donnelly Act claim because “retirement annuity market at Wyckoff” failed to include “the other substitute investment options available, such as stocks, bonds, or mutual funds, that may be available to Wyckoff’s employees”), *aff’d*, 30 A.D.3d 474, 820 N.Y.S.2d 275 (2d Dep’t 2006).

CGSC’s product market allegations – “the market for double-decker sightseeing tour buses” and “the hotel Concierge Desk distribution channel for the sale of tickets to passengers for the double-decker sightseeing tours in New York City” – lack any reference to the concepts of “interchangeability of use” or “cross-elasticity of demand.” (Compl. ¶ 36); *see Arnold Chevrolet LLC v. Tribune Co.*, 418 F. Supp. 2d 172, 187 (S.D.N.Y. 2006) (“the pleading is devoid of any factual allegations . . . as to why Plaintiffs’ market should be limited to ‘new automobiles’”); *B.V. Optische Industrie de Oude Delft v. Hologic, Inc.*, 909 F. Supp. 162, 172 (S.D.N.Y. 1995) (“pleadings do not refer to any reasonably interchangeable alternatives, nor do they offer an explanation for why they are defining the relevant product market in such narrow terms”).

Turning first to its “hotel Concierge Desk distribution channel” market, CGSC does not assert any facts – let alone a “theoretically rational explanation” – for its conclusion that hotel guests would only buy from the hotel concierge. *Bayer Schera Pharma AG v. Sandoz, Inc.*, Nos. 08-CIV-03710 & 08112, 2010 WL 1222012, at *4 (S.D.N.Y. Mar. 29, 2010) (citation omitted). Without these allegations, CGSC’s Complaint “bears no rational relation to the methodology

courts prescribe to define a market for antitrust purposes – analyses of the interchangeability of use or the cross-elasticity of demand.” *Gianna Enters. v. Miss World (Jersey) Ltd.*, 551 F. Supp. 1348, 1354 (S.D.N.Y. 1982).¹

CGSC claims to have cured its interchangeability pleading defect through Betty Zhang’s affidavit testimony that “no one could mistake a Concierge Desk for (i) a visitor center; (ii) a travel agency; (iii) one of the ‘hawkers’ or ticket agents on the street; and (iv) an internet site.” (May 7, 2010 Zhang Aff. ¶ 88.) “Mistake” is not the test for market definition. The crucial requirement for pleading is the extent to which passengers use distribution channels interchangeably, even if the channels are different. More than 90% of Twin America’s sales occur through ticket agents on the street, visitor centers, Internet sites, travel agents and other third parties. (See Apr. 8, 2010 Marmurstein Affirm. ¶ 22.) This fact conclusively establishes that most hotel guests purchase their Twin America tickets someplace other than their hotel, and consequently vitiates CGSC’s allegation that hotels are some unique antitrust distribution market.

Put simply, the “someplace elses” that hotel guests turn to for tickets must be included in any distribution market, even assuming a distribution market can be validly limited to a single branded product, which Twin America also contests. See *Kramer v. Pollock-Krasner Found.*, 890 F. Supp. 250, 254-55 (S.D.N.Y. 1995) (dismissing Donnelly Act and Sherman Act claims based on distribution market for “the offering and sale *at auction* of paintings by modern and contemporary artists” because “[p]otential purchasers of Pollacks have reasonable and varied alternatives to Sotheby’s and Christie’s”) (citation omitted) (emphasis in original).

¹ Betty Zhang’s affidavit references to “interchangeability of use” and the Department of Justice and Federal Trade Commission’s Horizontal Merger Guidelines are no cure. (See May 7, 2010 Zhang Aff. ¶¶ 37, 51-52.) Under N.Y. Comp. Codes R. & Regs. tit. 22, § 202.8, “[a]ffidavits shall be for a statement of the relevant facts, and briefs shall be for a statement of the relevant law.” See also *Wider v. Heritage Maint., Inc.*, 14 Misc. 3d 963, 966, 827 N.Y.S.2d 837, 841 (N.Y. Sup. Ct. 2007).

The uniformity in Twin America's ticket price across distribution channels, moreover, establishes beyond a doubt that CGSC's distribution market is implausible and improper. The cases CGSC cites make the point. *See, e.g., Henry v. Chloride, Inc.*, 809 F.2d 1334, 1342 (8th Cir. 1987) ("[defendant] charged route customers prices different from those for sales through its fixed branch location"); *Photovest Corp. v. Fotomat Corp.*, 606 F.2d 704, 713 (7th Cir. 1979) ("Fotomat's prices for photo processing were approximately 20% or more above conventional forms of retailing"); *Columbia Broad. Sys., Inc. v. FTC*, 414 F.2d 974, 979 (7th Cir. 1969) ("the price of records purchased through the record club is \$2.37 and the average price for records purchased through a dealer is \$2.98"); *Ansell Inc. v. Schmid Labs.*, 757 F. Supp. 467, 475 (D.N.J.) ("the prices of condoms sold at retail and those sold to GSA move differently"), *aff'd mem.*, 941 F.2d 1200 (3d Cir. 1991).

FTC v. Staples, 970 F. Supp. 1066 (D. D.C. 1997), a case heavily relied upon by CGSC, underscores CGSC's pleading deficiency. In determining that the "sale of consumable office supplies through office supply superstores" was the appropriate relevant market, the *Staples* court focused on key "pricing evidence" showing that prices in markets where Staples faced no office superstore competition were 13% higher than in markets where Staples competes with both Office Depot and Office Max. 970 F. Supp. at 1076-77, 1080. "The pricing evidence," according to the *Staples* court, "indicates that non-superstore sellers of office supplies are not able to effectively constrain the superstores' prices, because a significant number of superstore customers do not turn to a non-superstore alternative when faced with higher prices in the one firm markets." *Id.* at 1080. Here the facts are just the opposite – passengers pay exactly the same amount for a Twin America ticket purchased through a concierge desk, street ticket agent or Visitor Center.

CGSC's "sightseeing tour bus market" definition is equally flawed. (Compl. ¶ 36.) Here, CGSC bases its market definition entirely on the NYSAG comments submitted to the federal STB in connection with that agency's pending review of the Twin America transaction. The NYSAG's economist expressed her view that "double-decker tours form their own product market segment." (Chan Decl. ¶ 16.) Twin America's independent economist and former head economist for the U.S. Department of Justice Antitrust Division, Professor Willig, explained, however, that Dr. Chan's market definition was both "misleading and economically flawed" because she failed to follow the test for defining an antitrust market. (Mar. 10, 2010 Willig ¶¶ 30-31.) *See infra* Part III at pp. 22-23.

Zhang's lengthy discussion of the "distinctions" between double-decker bus tours and helicopter rides, "OnBoard" tours, "Pedi-cabs" and horse drawn carriages is likewise irrelevant because it misapplies the interchangeability test. (May 7, 2010 Zhang Aff. ¶ 43.) There is no dispute that all of the transportation tours in New York City have some unique characteristics. But such distinctions "are virtually meaningless in a reasonable interchangeability analysis." *Mathias v. Daily News, L.P.*, 152 F. Supp. 2d 465, 482 (S.D.N.Y. 2001). The essential inquiry is consumer substitution among sightseeing options in New York City. *See United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 395 (1956).

In *Mathias v. Daily News, L.P.*, 152 F. Supp. 2d 465, 482-83 (S.D.N.Y. 2001), for example, the court rejected a product market definition of "the Daily News," despite allegations that the Daily News had "unique local features." The court explained:

There is no dispute that *The New York Times*, the *New York Post*, *The Wall Street Journal* and the *Daily News* differ and even compete in material ways. The essential inquiry, however, is whether the *Daily News* is a functional substitute for other newspapers. Some consumers may prefer the *Daily News* for any

number of reasons. But at a basic level, the *Daily News* is a newspaper, functionally interchangeable with many others, that competes in a market for readers of the news.

Id.; see also *Theatre Party Assocs. v. Shubert Org., Inc.*, 695 F. Supp. 150, 154-55 (S.D.N.Y. 1988) (“Plaintiff has failed to explain why other forms of entertainment, namely other Broadway shows, the opera, ballet or even sporting events are not adequate substitute products”); *Global Disc. Travel Servs.*, 960 F. Supp. at 705 (“[t]ickets on TWA are reasonably interchangeable with tickets on other airlines – all tickets between city pairs get passengers to and from desired locations”).

Here, consumers can and do at the very least freely turn to other substitute transportation tour options available in New York City. The sightseeing tour options in New York City are legion – Big Taxi Tours, OnBoard Tours, OnLocation Tours, New York Water Taxi, Harlem Spiritual Tours, Circle Line Tours, Helicopter Flight Services, CityTours, Gordon’s Guide Tours, New York Party Ride, New York Waterway, walking tours, bicycle tours, pedi-cabs, and horse and carriage tours, to name a few. (See Nov. 17, 2009 Willig ¶ 29.) Zhang herself makes this very point: “Conclerge Desks provide specialized services to hotel guests, Concierge Desk users, and consumers by being able to sit down or interact with such guests, users, and consumers [to] discuss a multitude of alternatives for sightseeing.” (May 7, 2010 Zhang Aff. ¶ 76.)

Contrary to CGSC’s repeated rhetoric, moreover, double-decker bus tours are not “the number one tourist attraction in the city.” (Transcript of STB Hearing 35:4-5.) Far from it. Professor Willig explained that “in 2008, New York City was visited by 47.0 million tourists, less than 5% of whom purchased tickets from either party to the joint venture.” (Nov. 17, 2009 Willig ¶ 33.) The figure was 3.37% in 2009. (See May 18, 2010 Marmurstein Affirm. ¶ 18.)

“These figures indicate that bus-tours are not an obligatory part of the itineraries of most tourists.” (Nov. 17, 2009 Willig ¶ 33.)

CGSC has failed to plead how or why tourists do not interchangeably choose from among the variety of tours and other attractions available in New York – in fact, Zhang’s testimony is that *they do*. See *Mathias*, 152 F. Supp. 2d at 482-83; *Theatre Party Assocs.*, 695 F. Supp. at 154-55. CGSC’s failure to properly allege a relevant market is a fatal deficiency which alone mandates dismissal of the Donnelly Act claims.

C. Twin America’s Unilateral Conduct Is Not Actionable Under The Donnelly Act Nor Is “Attempt”

CGSC mistakenly conflates the joint venture arrangement between CitySights Twin and International Bus Services, Inc. (“IBS”) that merged various assets to create Twin America, with subsequent action by Twin America itself. The joint venture may be an “arrangement” between CitySights Twin and IBS. But the arrangement fully merged the New York tour transportation assets and services of CitySights and IBS. (See Mar. 10, 2010 Willig ¶ 11; Apr. 8, 2010 Marmurstein Affirm. ¶ 8; May 18, 2010 Marmurstein Affirm. ¶ 26.) Dr. Willig’s expert report in the STB proceeding thoroughly explains that Twin America is a “single integrated entity.” (See Nov. 17, 2009 Willig ¶ 12; Mar. 10, 2010 Willig ¶¶ 8-13.) CGSC acknowledged as much at the TRO hearing: “it was a merger.” (Transcript of TRO Hearing 4:7.)

As a single entity operating on its own accord, Twin America cannot conspire with itself. See *Texaco Inc. v. Dagher*, 547 U.S. 1, 6 (2006) (joint venture is “‘regarded as a single firm’” for purposes of the antitrust laws). Nor does Twin America’s current use of the Gray Line and CitySights brands affect its single-entity status. In *Texaco v. Dagher*, 547 U.S. 1 (2006), Texaco and Shell “collaborated in a joint venture, Equilon Enterprises, to refine and sell gasoline in the western United States under the original Texaco and Shell brand names.” *Id.* at 3. After

consummating the transaction, Equilon continued to sell under those already-established brand names. *Id.* at 4. The Supreme Court conclusively held that continuing to conduct retail operations under separate brands did not turn the joint venture into a *per se* illegal “sham” or “price fixing” scheme. *Id.* at 6.

CGSC’s theory that Twin America is trying to take over New York City hotel concierge desks to lock out double-decker tour bus competition is solely about Twin America’s conduct, not the joint venture agreement that formed Twin America. (*See* Pl. Opp. Mem. at 21.) Because a single entity does not participate in an anticompetitive “arrangement” under the Donnelly Act, this aspect of the Donnelly Act claim must be dismissed as a matter of law. *See Abe’s Rooms, Inc. v. Space Hunters, Inc.*, 38 A.D.3d 690, 692, 833 N.Y.S.2d 138, 140 (2d Dep’t 2007) (“plaintiffs did not allege the existence of a contract, agreement, arrangement, or combination and that the defendants engaged in concerted activity with another legal entity”).

CGSC’s Donnelly Act claim should also be dismissed because it is, at most, an “attempt claim.” The Donnelly Act does not provide plaintiffs with a private right of action for attempted monopolization. *See Bevilacqua v. Ford Motor Co.*, 125 A.D.2d 516, 519, 509 N.Y.S.2d 595, 599 (2d Dep’t 1986) (“Although Sherman Act [Section 2] prohibits attempted monopolization, the New York State Donnelly Act contains no such prohibition. Therefore, plaintiffs’ allegation of attempted monopolization does not state a viable cause of action.”). Though, as the Bus Defendants’ Opposition noted, there are cases that reference attempt claims in Donnelly Act cases, *see* Bus Defendants’ Opp. Mem. at 14, *Bevilacqua* directly addressed the issue, holding the Donnelly Act does not provide a private right of action for attempt claims in N.Y. Gen. Bus.

Law § 340(5). 125 A.D.2d at 519, 509 N.Y.S at 599. CGSC has neither addressed the reasoning in *Bevilacqua* nor cited a single case to distinguish its precedential value.²

III. CGSC'S CLAIM THAT TWIN AMERICA IS A MONOPOLY: THE CASE BEFORE THE STB

CGSC's claim that Twin America has monopolized a market for double-decker bus services is entirely premised on the NYSAG's comments and Dr. Chan's Declaration filed with the federal Surface Transportation Board. This fact itself is reason enough for the Court to leave to the STB the decision pending before the STB on the evidence submitted to the STB.

Equally important, the NYSAG's Objections and Dr. Chan's Declaration are not authoritative proof of anything. The full evidentiary record before the STB makes the point. In contrast to Dr. Chan, an economist on staff with the NYSAG, Twin America submitted to the STB two independent expert reports by Dr. Willig, a thirty-year Professor of Economics and Public Affairs at Princeton University and former chief economist for the U.S. Department of Justice Antitrust Division. (See Nov. 17, 2009 Willig ¶¶ 1-2; Mar. 10, 2010 Willig ¶ 1.) Professor Willig concluded:

- "Based on my review of the economic evidence produced in this application, I conclude that the Twin America joint venture will not result in anticompetitive effects for consumers of transportation tour services or, more specifically, double-decker bus tour services, nor will it harm the public interest."
- "The economic data produced indicate that the joint venture is expected to result in an estimated cost savings of \$7 to \$11 million on the combined basis. These cost savings are of the kind that create benefits for consumers by improving the quality of services

² Relatedly, CGSC claims that Twin America has failed to cite any case holding that a Donnelly Act violation cannot constitute an "independent tort" for purposes of tortious interference. (See Pl. Opp. Mem. at 39.) In *Global Reinsurance Corp.-U.S. Branch v. Equitas Ltd.*, No. 600815-2007, 2008 WL

provided at lower costs. In addition, these cost savings will likely result in increased quantity and quality of services provided. The rationalization of productive and supporting assets benefits the public interest by releasing assets to more productive uses, both within the New York City marketplace and elsewhere.”

- “My economic analysis of the marketplace also indicates that Twin America competes with other bus operations as well as other non-bus transportation tour services, including air, land, and water-based services. These services exert competitive discipline on Twin America’s ability to raise price. In addition, the ease with which entry or repositioning by new or existing competitors into double-decker bus transportation tours can occur, which has been demonstrated by CitySights’ own entry, would likely discipline any attempt by the joint venture to raise prices above competitive levels.”
- “I have reviewed the comments provided by the New York State Attorney General (NYSAG) and find those comments to be inconsistent with economic logic and not reflective of accepted standard economic views of competitive effects, entry or market definition.”
- “The NYSAG is incorrect to contend that the joint venture is not an efficiency-enhancing integration of economic activity. Twin America is structured as a permanent venture that ended competition in bus tours between the two parties. While Twin America continues to operate both the Gray Line and CitySights brand names, all aspects of the operation are under the management of a single entity. In line with this integration, the fleet of double-decker buses has been rationalized and the operations are being optimized to generate synergies and efficiencies. Any profits and risks are shared by the joint venture’s

2676805, at *7 (Sup. Ct. N.Y. Co. July 3, 2008), the New York Supreme Court rejected a tortious interference with contract claim because “[t]he Donnelly Act is not a tort.”

participants.”

- “I disagree with Dr. Chan’s contention that the synergies and efficiencies are speculative and unverified. In this instance, the joint venture has been in operation for almost one year, which provides the opportunity to observe directly what cost savings have been achieved.”
- “These cost savings have been achieved while the joint venture has provided equivalent or improved services . . . [Redacted Analysis] . . . suggesting the inaccuracy of Dr. Chan’s contention that cross-ticketing may not decrease passenger wait times because bus passenger seating capacity limits may be exceeded.”
- “I also disagree with Dr. Chan’s assertions that the price increases implemented on Gray Line and CitySights double-decker tours are indicative of the exercise of market power and indicative that the antitrust relevant market is double-decker bus tours. Dr. Chan’s analysis of prices does not constitute an application of the hypothetical monopolist test laid out in the Merger Guidelines to delineate a relevant market. Dr. Chan does not attempt to examine whether the prices of competing tourist attractions and tours also increased, which is a necessary part of a proper analysis of the implications of price rises for market power or relevant market definition. The evidence suggests that the prices of other attractions and tours also increased.”

(Nov. 17, 2009 Willig ¶¶ 5-8; Mar. 10, 2010 Willig ¶¶ 3-6.)

Of particular note, Professor Willig’s report explains why Dr. Chan’s “double-decker bus tour” market is contrary to the prevailing economic test set forth in the Horizontal Merger Guidelines:

Dr. Chan’s approach is not sufficient to establish that double-decker bus tours are a separate relevant market . . . [because] many

other tours and attractions in New York City make up the full range of competing alternative products to double-decker tours. Dr. Chan has performed *no analysis* of which other tour products consumers might consider substitutes for double-decker bus tours, and changes in the prices of those competing products.

(Mar. 10, 2009 Willig ¶ 35) (emphasis added).

Also significant, Professor Willig's report discussed why Twin America's \$5.00 "price increase" does not indicate "market power." (*Id.* ¶¶ 29-37.) To compensate for rising costs, Coach raised Gray Line prices in February 2009, *before* Twin America was formed. (*Id.* ¶ 29.) Following the merger, Twin America charged the same price for tickets under both the Gray Line and CitySights brands. (*Id.*)

Dr. Chan viewed these two facts as evidence that double-decker bus tours are in a separate relevant market. (*Id.*) Professor Willig, however, criticized Dr. Chan's approach: "Dr. Chan's pricing analysis is both misleading and economically flawed." (*Id.* ¶ 30.) More specifically, Dr. Willig explains:

In addition to the evidence that the price increases were not dependent on the creation of the joint venture, Dr. Chan's approach is not sufficient to establish that double-decker bus tours are a separate relevant market and that Twin America has exercised market power. Dr. Chan makes this claim by looking at Gray Line's and CitySights' price increases in isolation. Many other tours and attractions in New York City make up the full range of competing alternative products to double-decker tours. Dr. Chan has performed no analysis of which other tour products consumers might consider substitutes for double-decker bus tours, and changes in the prices of those competing products. I have examined the price changes of other competing tours in New York City to determine if Gray Line and City Sights tour prices were moving in isolation relative to other competing substitutes. As Exhibit 4 shows, Circle Line increased its rate by 12.9% to 21.1% from 2008 to 2010, NY Water Taxi increased its fares by 25%, Harlem Gospel Tour rates increased 10%. *The list price increases taken by Gray Line and Twin America are not dissimilar to, and in many cases are lower than those taken by other competing*

NYC tour operators during the same time period. NYC taxi fares were also rising during this time period. In May 2009, the state legislature passed a resolution to increase the base fare for NYC taxis by \$0.50 to \$3.00 to cover a deficit at the Metropolitan Transportation Authority; the fare increase came into effect in November 2009.

(Mar. 10, 2010 Willig ¶ 35) (emphasis added). Twin America's pricing neither resulted from the merger nor indicates Twin America has "market power."³

Nor has Twin America decreased passenger services. Unlike Dr. Chan, Professor Willig conducted a detailed and thorough analysis of Twin America's *actual* operations over its first year. While the details of his review are not available in the public version of his report, his firm conclusions that the merger achieved its targeted cost savings while improving service are significant. (See generally Mar. 10, 2010 Willig ¶¶ 14-28.) Indeed, as STB Chairman Elliot compelled CGSC to concede at the federal agency April 27 hearing, CGSC would not recommend a tour service that was not the highest quality to its hotel guests. (See Transcript of STB Hearing 36:14-18) ("We – you know, whether it's some sports, double-decker tour busses – if you're quality, we've been around 100 years. If you're – and you're well priced; you do your job; we'll use you."). CGSC likewise cannot be heard in this Court to complain Twin America's service has deteriorated while simultaneously and systematically recommending the transportation tours to hotel patrons.

CGSC lastly joins the NYSAG in its belief that Twin America filed its STB application to avoid the NYSAG investigation. That aspersion is entirely baseless. The filing is mandatory. And as the record before the STB makes clear, Twin America retained counsel to prepare and

³ STB Commissioner Nottingham made a similar point at the recent STB hearing: "a lot of prices have gone up in New York in the tourism business, sometimes affecting Broadway shows, sometimes affecting cruise line tour operations." (Transcript of STB Hearing 45:4-7.)

file its STB Application *before* the NYSAG began its investigation. Likewise, though the NYSAG has questioned the interstate nature of Twin America's operations, the record before the STB clearly establishes Twin America's through-ticketing arrangements with other transportation carriers and charter operations are interstate. *See generally* Aug. 19, 2009 Verified Application of Stagecoach Group PLC and Coach USA, Inc., et al.; Nov. 17, 2009 Reply of Applicants to Comments of New York State Attorney General; Mar. 10, 2010 Reply of Applicants to Sur-Reply of the New York State Attorney General and to Comments of Transport Workers Union AFL-CIO, Local 225, *available at* <http://www.stb.dot.gov/filings/all.nsf/WebFilingDate?openform> (last visited May 21, 2010).

The propriety of the Twin America merger is presently before the STB, a federal agency with exclusive jurisdiction to approve the consolidation, merger or acquisition of a motor passenger carrier. All parties have submitted to that agency's jurisdiction. (*See* Transcript of STB Hearing 53:20-22, 54:1) (James Yoon, Assistant Attorney General for the State of New York, Antitrust Bureau) ("I believe the STB can – has the authority to decide whether the Applicant's business – the double decker business is intrastate or interstate."). (CGSC, despite ample opportunity over the past year, never filed comments or objections with the STB and never contested the STB's jurisdiction). The matter has been briefed and argued, and the STB's ruling is forthcoming.

IV. CONCLUSION

For the foregoing reasons, Twin America respectfully requests that this Court vacate the temporary restraining order and dismiss CGSC's complaint with prejudice.

Dated: May 21, 2010
New York, New York

PAUL, HASTINGS, JANOFSKY,
& WALKER LLP

By: s/William A. Novomisle
Michael P.A. Cohen (*pro hac vice*)
PAUL, HASTINGS, JANOFSKY &
WALKER, LLP
875 15th Street N.W.
Washington, D.C. 20005
Telephone: (202) 551-1880
Facsimile: (202) 551-0280
michaelcohen@paulhastings.com

Kenneth M. Breen
William A. Novomisle
PAUL, HASTINGS, JANOFSKY &
WALKER, LLP
Park Avenue Tower
75 E. 55th Street
First Floor
New York, NY 10022
Telephone: (212) 318-6344
Facsimile: (212) 230-7828
kennethbreen@paulhastings.com

ATTORNEYS FOR TWIN AMERICA,
LLC AND CITYSIGHTS TWIN, LLC

Alan G. Katz
SARETSKY, KATZ, DRANOFF & GLASS
LLP
475 Park Avenue South
New York, NY 10016
Telephone: (212) 973-9797
Facsimile: (212) 973-0939
akatz@skdglaw.com

ATTORNEY FOR CITYSIGHTS TWIN,
LLC

Richard M. Steuer
MAYER BROWN LLP
1675 Broadway
New York, NY 10019
Telephone: (202) 506-2530
Facsimile: (212) 849-5530
rsteuer@mayerbrown.com

ATTORNEY FOR INTERNATIONAL
BUS SERVICES, INC.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

Donald M. Chiano, being duly sworn, deposes and says:

I am not a party to this action, am over 18 years of age and reside in New York, New York. On May 21, 2010, the foregoing Reply Memorandum of Law in Support of Bus Defendants' Motion to Dismiss and Opposition to Motion for Preliminary Injunction was filed electronically and served by e-mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of this court's electronic filing system or by e-mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

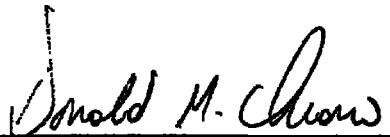
The following counsel of record were served via e-mail:

Steven J. Shore
Mark A. Berman
Gabriel Levinson
GANFER & SHORE, LLP
360 Lexington Avenue
New York, NY 10017

Alan D. Zuckerbrod
SILLER WILK LLP
675 Third Avenue
New York, NY 10017

Alan G. Katz
SARETSKY, KATZ, DRANOFF & GLASS LLP
475 Park Avenue South
New York, NY 10015

Richard M. Steuer
MAYER BROWN LLP
1675 Broadway
New York, NY 10019



Donald M. Chiano

Sworn to before me this
21st day of May, 2010


Notary Public

Rebecca J. Borowitz
Notary Public, State of New York
No. 01BO604216
Qualified in New York County
Commission Expires Feb 15, 2010

EXHIBIT A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**STB DOCKET NO. MC-F-21035
STAGECOACH GROUP PLC AND COACH USA, INC., et al.
– ACQUISITION OF CONTROL – TWIN AMERICA, LLC**

**VERIFIED STATEMENT OF
PROFESSOR ROBERT D. WILLIG**

I. Qualifications and Assignment

1. I am Professor of Economics and Public Affairs at Princeton University where I have held a joint appointment in the Economics Department and at the Woodrow Wilson School of Public and International Affairs for 30 years. Also, I am a senior consultant with Compass Lexecon. I have authored some 75 articles in the economics literature and a book on competition and the theory of industrial market structure. I am the co-editor of the *Handbook of Industrial Organization*, which summarizes the state of economic thinking on the organization of, and competition among, firms. My focus is microeconomics, with particular specialization in industrial organization, which is the field of economics that deals with competition among firms, and is therefore the area of economics that deals most directly with antitrust issues. In my teaching, I focus on courses covering microeconomics generally, and specialized courses on regulation, antitrust, and competition policy.
2. I have extensive experience analyzing economic issues arising under the law. While on leave from Princeton, I served as the Deputy Assistant Attorney General in the Antitrust Division of the United States Department of Justice from 1989 to 1991, and in that capacity served as the Division's Chief Economist. I led a group of 50 Ph.D. economists

and finance specialists, investigating competition matters such as mergers and acquisitions and possible anticompetitive behavior. I have appeared as an expert witness before Congress, federal and state courts, federal administrative agencies, and state public utility commissions on subjects involving competition, regulation, intellectual property rights, and antitrust. I also have served as a consultant to the Federal Trade Commission and the United States Department of Justice on antitrust and policy issues.

3. My curriculum vita, which includes a list of my publications, and a list of my testimony are presented in the Attachment. The opinions expressed here are based on those materials and on my knowledge and experience in antitrust economics, and on my knowledge and experience in advising clients on antitrust matters over the past 30 years. I have been assisted in a customary manner by the staff at Compass Lexecon. The opinions expressed here reflect the information and facts available to me at this time. I reserve the right to revise my opinions if additional information and facts make revisions appropriate.
4. I have been asked by counsel for the joint venture, Twin America, to consider the competitive and public-interest implications of the formation of that joint venture and to review and comment on the filing made by the New York State Attorney General in this matter.

II. Summary of Conclusions

5. Based on my review of the economic evidence produced in this application, I conclude that the Twin America joint venture will not result in anticompetitive effects for consumers of transportation tour services or, more specifically, double-decker bus tour services, nor will it harm the public interest.
6. The economic data produced indicate that the joint venture is expected to result in an estimated cost savings of \$7 to \$11 million on the combined basis.¹ These cost savings are of the kind that creates benefits for consumers by improving the quality of services provided at lower costs. In addition, these cost savings will likely result in increased

¹ COA 000243.

quantity and quality of services provided. The rationalization of productive and supporting assets benefits the public interest by releasing assets to more productive uses, both within the New York City marketplace and elsewhere.

7. My economic analysis of the marketplace also indicates that Twin America competes with other bus operations as well as other non-bus transportation tour services, including air, land, and water-based services. These services exert competitive discipline on Twin America's ability to raise price. In addition, the ease with which entry or repositioning by new or existing competitors into double-decker bus transportation tours can occur, which has been demonstrated by CitySights' own entry, would likely discipline any attempt by the joint venture to raise prices above competitive levels.
8. I have reviewed the comments provided by the New York State Attorney General (NYSAG) and find those comments to be inconsistent with economic logic and not reflective of accepted standard economic views of competitive effects, entry or market definition.
9. I provide a detailed discussion of my assessment of the economic evidence and support for these conclusions below.

III. Background

10. On March 17, 2009, IBS and CitySights formed a joint venture that combined the New York City tour-bus operations of the two firms.² IBS operated under the trade name Gray Line New York, providing various transportation and sightseeing tour services. Gray Line contributed 87 total vehicles – 59 double-decker buses for sightseeing services, 12 motorcoaches used in local and interstate charter services, and 16 miscellaneous support vehicles. CitySights contributed 62 double-decker sightseeing buses to the joint venture along with eight additional buses it had committed to build by the end of 2009.³
11. The joint venture, Twin America, provides transportation tour services in New York City using double-decker buses and other vehicles. As part of its tourism services, Twin

² International Bus Service ("IBS") is a Coach USA controlled motor passenger carrier and is an operating subsidiary of Coach USA. CitySights Twin and IBS each holds 50% voting rights in the joint venture. IBS holds 60% of the economic interests and CitySights has 40%. Verified Statement of Ross Kinnear at ¶ 3.

³ Verified Statement of Ross Kinnear at ¶ 4.

America provides transportation services from hotels in New Jersey to New York City and engages in joint arrangements with other carriers to provide transportation to passengers traveling between New York State from other states, including Pennsylvania, New Jersey, and the New England states. Twin America services are marketed and sold across the United States and internationally.

12. Twin America has maintained the two brand names of the originating companies – *Gray Line* and *CitySights NY* – and the distinct appearance of the respective buses. The joint venture, however, is one economic entity whose assets and operations are contained within a single legal company, which is jointly owned by IBS and CitySights Twin.⁴ Tickets to the bus tours are sold through a variety of outlets: fixed locations (visitors' centers, travel agencies, wholesalers, and tour operators) as well as through street ticket sellers, hotel concierges, and the internet. As a general matter, ticket sellers earn a commission based on the dollar value of the tickets they sell.
13. Twin America competes within a broad industry of tourism services in the New York City metropolitan area and within a narrower segment of transportation tour services, which includes land, air, and water-based tour services. These services include water tours, such as *New York Water Taxi* and *Circle Line*, helicopter tours, and various other sight-seeing services offered to small and large groups. Within the narrower land-based transportation tour services segment, the Twin America joint venture competes with several other firms currently offering various types of bus tours in New York City. These include *On Board New York City*, *Big Taxi*, *On Location*, and *Harlem Spiritual*.

IV. The Twin America Joint Venture Promotes the Public Interest

A. The Joint Venture Results in Efficiencies and Synergies

14. The joint venture has estimated cost savings from the consolidation of \$7 to \$11 million on a combined basis.⁵ There are major categories of anticipated cost savings and

⁴ Stagecoach Group PLC and Coach USA, Inc., et al., Acquisition of Control Twin America, LLC, Before the Surface Transportation Board, Verified Application.

⁵ COA 000243.

- efficiencies – (1) cross-ticketing, (2) implementation of best operating practices, and (3) rationalization of operating and back-office assets, including employees.
15. First, Twin America has implemented cross-ticketing on multilingual tours, and will introduce cross-ticketing on the Brooklyn route. If successful, Twin America will extend cross-ticketing to the Uptown and Downtown bus tours. This new service will enable customers to use both CitySights and Gray Line buses with one ticket. The purpose of cross-ticketing is two-fold – to reduce the wait time for passengers moving between attractions and more effectively to utilize assets by increasing the number of passengers per bus. The time between buses at most stops on the Brooklyn tour, for example, is generally 45-60 minutes. With cross-ticketing, the time between buses will be reduced to 30 minutes. The ability to "hop-on and hop-off" more frequent buses provides customers a major benefit. A study by Audience Research & Analysis, September 2008, entitled "Gray Line Hop-on Hop-off Tours, A Ridership Study," indicated that Gray Line riders were less satisfied with the waiting time at tour stops in 2008 compared with the results in 2002. By combining the operations of Gray Line and CitySights, Twin America is able to deploy buses in such a way as to reduce the wait-time for the passenger, thereby enhancing consumer benefits.
16. Twin America also benefits from cross-ticketing by increasing its occupancy per bus, which means fewer buses needed to serve the same ridership. This enables Twin America to free up its assets for more productive deployment elsewhere and generates cost savings by reducing expenses without adversely affecting Twin America's ability to serve its ridership. For example, Twin America will achieve reduced expenses for spare parts, maintenance and repair, and fuel. Rationalization of buses will also extend the life of each bus by increasing the rotation cycle. The rationalization and redeployment of these assets also provides a public-interest benefit by reducing the number of buses on identical routes, which translates into reduced traffic congestion, less fuel consumption, and reduced air pollution. These consumer and operational benefits could not occur in the absence of the joint venture.
17. Second, by combining the best administrative, management, and operational practices of each partner, Twin America will be able to reduce expenses. For example, Gray Line, as part of Coach USA, has benefited from Coach USA's experience in servicing and

maintaining its fleet of buses. These benefits can be applied to all Twin America's bus assets. Another example of best practices is selecting and applying across the combined entity a single payroll system which uses the best payroll staff and IT resources available from each joint venture partner. CitySights, for example, brings to the joint venture its expertise in internet and international sales and marketing, which the joint venture has started to apply to Gray Line's sales. Similarly, Gray Line's expertise and best practices in servicing large accounts also is being applied to CitySights' former operations. Gray Line's vast experience in procuring and managing insurance for its large fleet of buses is another source of efficient practices that will be applied to CitySights' former operations. Such best practices application is a merger-specific efficiency recognized in the economics literature.⁶

18. Third, the joint venture expects to achieve cost savings by rationalizing its productive and back-office operations. Specifically, it is consolidating call centers and offices, leasing new office space for the consolidated office functions, and is closing down satellite operation offices. The joint venture is combining the partners' accounting, IT, and sales and marketing functions. This consolidation will result in the trimming of the workforce, which is typical in most efficient joint ventures and asset mergers. These reductions in workforce are welfare-enhancing efficiencies in the sense that needlessly redundant labor resources and assets are released to the market to be deployed for more productive uses in the economy. This reallocation of resources benefits the firm in the long run by making it more efficient, which increases the likelihood that the firm will expand and create new job opportunities for other workers.

B. The Efficiencies and Synergies Are in the Public's Interest

19. Gray Line operated 79 double-decker tour buses prior to entering into the joint venture. The combination of Gray Line and CitySights' double-decker bus assets required Gray Line to contribute only 59 double-decker buses to the joint venture. This enabled Gray Line to redeploy 20 tour buses to its transportation tour bus operations in Chicago, where

⁶ Werden, Gregory, "An Economic Perspective on the Analysis of Merger Efficiencies," *Antitrust Magazine* Summer 1997. ("Efficiencies may involve intangible assets, such as superior technology. Making one merging firm's superior technology available to the other can lower the cost or improve its quality. Other examples are brand or corporate goodwill.").

demand for transportation tour services has been growing.⁷ I include as Exhibit 1 charts comparing gross sightseeing revenues for New York City and Chicago over time. The chart shows that gross sightseeing revenues in New York City have been declining while sales in Chicago have been increasing.

20. This redeployment of buses resulted in net benefits to Chicago tourists that were being underserved and net benefits to New York City tourists by more efficiently using on-the-street assets, i.e., the consolidation is expected to result in a higher density of ridership per bus. This benefits the public by lowering fuel consumption, reducing air pollution, and lessening traffic congestion, while improving the wait-time for tour bus riders. The redeployment of these 20 double-decker buses did not reduce the quantity or quality of services provided in New York through the joint venture, while bringing significant new service opportunities to Chicago.
21. Application of best practices and rationalization of productive assets benefits the New York City public interest. For example, Werden identifies situations in which rationalization of assets will result in beneficial cost savings.⁸ One such benefit occurs when the excess capacity of one merging firm is sufficient to allow the facilities or activities of the other merging partner to be shut down (in this case, redeployed to other service areas). This results in fixed costs savings and may also result in variable cost savings if the assets maintained (here, buses) have lower costs of producing the demanded services.
22. Werden also recognizes cost savings created when production for one of the merging firms can be profitably moved into productive capacity owned by the other merging firm. Cost savings created through rationalization is expected because cross-ticketing will increase the occupancy rate per bus, which will result in lower fuel and maintenance costs. In addition, by moving the underutilized back-office functions and management of both CitySights and Gray Line into one firm and shutting down the individual operations of each, additional cost savings are created.

⁷ Verified Statement of Ross Kinnear at ¶8.

⁸ Werden, Gregory, "An Economic Perspective on the Analysis of Merger Efficiencies," *Antitrust Magazine*.

V. The Joint Venture Does Not Increase Market Power or Increase the Likelihood of Anticompetitive Effects

23. While the analysis of mergers is at the core of the antitrust laws, it is important to note that the vast majority of all mergers and joint ventures present no anticompetitive risk whatsoever. The U.S. Department of Justice and the U.S. Federal Trade Commission, the two federal agencies charged with merger enforcement, investigate a small portion of mergers and challenge an even smaller portion of those they investigate.
24. In their Horizontal Merger Guidelines, the Department of Justice and the Federal Trade Commission describe their approach to analyzing mergers as follows:

The unifying theme of the Guidelines is that mergers should not be permitted to create or enhance market power or to facilitate its exercise. Market power to a seller is the ability profitably to maintain prices above competitive levels for a significant period of time. In some circumstances, a sole seller (a "monopolist") of a product with no good substitutes can maintain a selling price that is above the level that would prevail if the market were competitive. Similarly, in some circumstances, where only a few firms account for most of the sales of a product, those firms can exercise market power, perhaps even approximating the performance of a monopolist, by either explicitly or implicitly coordinating their actions.⁹

25. The combination of productive assets and back-office operations of the two joint venture partners, along with the decision-making for the joint venture housed within Twin America, suggests that the joint venture should be analyzed as if it were a merger for purposes of examining its competitive effects.¹⁰

A. The Business Justification for the Joint Venture Is Consistent with Creating a More Effective Competitor

26. The New York City tourist industry is experiencing the impacts of the economic downturn and increased fuel costs. The economic and financial crisis, along with higher taxes on hotel rooms, has adversely affected the number of tourists choosing New York City as a destination, which in turn has adversely affected ridership and costs at both

⁹ Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, Issued April 2, 1992, at § 0.1.

¹⁰ Antitrust Guidelines for Collaboration Among Competitors, Issued by the Federal Trade Commission and U.S. Department of Justice, April 2000 at Section 1.3.

CitySights and Gray Line. Tourism in 2009 is down about 5.3%, compared with 2008. Although tourism reached a peak in 2008, the rate of increase in tourist visitors generally has slowed since 2006. This is apparent in hotel occupancy rates. Comparing occupancy rates in January-February 2008 and 2009, one sees a significant decline from 83% in 2008 to 65% in 2009. Occupancy rates in April 2009 compared with April 2008 also declined, although at lower rate. The corresponding statistics are presented in Exhibits 2 through 4 to this Statement.

27. Operations at both companies were experiencing upward pressures on prices. CitySights and Gray Line identified an opportunity to combine their operations in order to generate cost savings that would enable the joint venture to compete more effectively in this challenging economic environment. Specifically, a major cost of operating a double-decker transportation tour business is fuel expense. Exhibit 5 shows that fuel expense increased significantly beginning in the fourth quarter of 2007. Although fuel expense is down somewhat in the first quarter of 2009, it remains far above levels experienced prior to late 2007.
28. In sum, the joint venture expects to provide (1) tour bus consumers a higher quality service delivered at a lower cost of service, (2) better coordinated service with reduction in road congestion and enhanced tour value, and (3) cost savings and synergies arising from best practices and elimination of duplicative services.¹¹ Consumers and the public interest will gain positive net benefits from the formation and operation of the joint venture.

B. Competitive Dynamics of NYC Tour Buses

1. Twin America Competes with Other Modes of Transportation Tourism

29. Twin America competes with various transportation tour companies. It competes most directly with other land, air, and water-based tours. Competitors include Big Taxi Tours, OnBoard Tours, OnLocation Tours (specializing in movie and television sites), New York Water Taxi, Harlem Spiritual Tours, Circle Line Tours, Helicopter Flight Services, and CityTours. Other more specialized transportation tours include Gordon's Guide

¹¹ See COA 000218-19.

Tours, New York Party Ride, My New York Party Bus.com, New York Waterway, and the MTA's Sightseeing and Trip Planner tours. In addition, tourists often choose to use self-guided tours, walking tours, bicycle tours, pedi-cabs, Segway tours, and New York City's iconic horse and carriage tours, rather than choose the services of motor transportation tourism services.

30. Land, air, and water-based tours provide competing types of sightseeing services which are differentiated by type of transportation mode, but essentially providing the consumer with access to similar types of attractions. For example, the 2009 Concierge Choice Awards selected New York Helicopter as the *top tour operation* for the year. Other nominees were Gray Line, Circle Line Sightseeing at 42nd Street, and My Kind of Town. In the *transportation category*, NY Water Taxi was selected over nominees NY Waterway, Helicopter Flight Services, and Circle Line Sightseeing at 42nd Street.¹² Concierges' recognition of these different modes of transportation does not lessen the view that these services compete across various transportation modes for tourists' money and time.
31. Even with a particular mode of transportation tour services, such as double-decker bus tours, each competitor provides a means for tourists in New York City to see popular tour attractions, and each competes for tourists' time and money. Hop-on, hop-off services, for example, are not unique to double-decker buses. These services are also offered with coaches and trolleys. Even within the same mode of transportation tour services, each alternative is differentiated. For example, CitySights offered three basic double-decker tours – Downtown Tour, Uptown Tour, and Night Tour. In addition, passengers could select add-ons to these tours, such as access to particular tourist sites (like the Empire State Building) or additional transportation services (e.g., helicopter tours). It also offered a motorcoach tour to Woodbury Commons shopping and offers a Brooklyn Tour that consisted of both double-decker and motorcoach transportation services. These tours are shown in Exhibit 6.
32. Gray Line offered a wide variety of double-decker tours, including the All Loop tour, Brooklyn tour, Downtown tour, Essential New York, Uptown Loop, Night Loop, and

¹² <http://cityguidenyc.com/viewcolumn.cfm?colid=19103>.

Classic New York.¹³ In addition, Gray Line offered tours that were not on double-decker buses, such as the NYC Heritage Tour, Multilingual Tour, and Showbiz Insider Tour. It also offered multi-transportation tours, including Manhattan by Sail tour. These are shown in Exhibit 7.

33. A significant number of tickets are sold through internet sites and concierge services. At the same time, these services present consumers with a multitude of different options, including alternative modes of sightseeing. For example, a tourist seeking advice from a concierge on various attractions in New York City may be offered options via double-decker buses, helicopter tours, water tours, self-guided tours, Segway tours, limousine services, among other options. The same vast array of alternatives, including prices, is available through internet sites such as City Guide and Viator. I note that in 2008, New York City was visited by 47.0 million tourists, less than 5% of whom purchased tickets from either party to the joint venture. These figures indicate that bus-tours are not an obligatory part of the itineraries of most tourists.

2. Potential Entry and Repositioning Would Discipline Any Attempt by Twin America to Raise Price Above Competitive Levels

34. The firms involved in the joint venture maintain that they compete with a wide array of land, air and water-based transportation tour services offered to New York City visitors as well as other sightseeing tour options that tourists can access directly or through other tour services. In evaluating the competitive effects of a joint venture, it is often necessary to define a relevant product and geographic market in which competition might be affected by the joint venture. As the Federal guidelines for analyzing joint ventures recognize, however, it may be possible to assess the competitive effects without defining a particular relevant market.¹⁴
35. In this case, it is not necessary to determine a precise relevant market definition because new entry or expansion by an existing firm would be expected to keep Twin America's services competitive. As noted in the Merger Guidelines:

¹³ I do not address Twin America's interstate and local charter services provided by motorcoach in this Statement.

¹⁴ Antitrust Guidelines for Collaboration Among Competitors, Issued by the Federal Trade Commission and U.S. Department of Justice, April 2000 at Section 3.32.

A merger is not likely to create or enhance market power or to facilitate its exercise, if entry into the market is so easy that market participants, after the merger, either collectively or unilaterally could not profitably maintain a price increase above premerger levels. Such entry likely will deter an anticompetitive merger in its incipiency, or deter or counteract the competitive effects of concern. Entry is that easy if entry would be timely, likely, and sufficient in its magnitude, character and scope to deter or counteract the competitive effects of concern. In markets where entry is that easy ... the merger raises no antitrust concern and ordinarily requires no further analysis.¹⁵

36. Transportation tour services are highly conducive to ease of entry and exit. Within the New York marketplace, both Coach USA and CitySights entered within the last ten years. Entry can and has occurred in a timely manner, at a reasonable cost, and of a magnitude sufficient to affect competition. Under these conditions, it is not necessary to determine the exact parameters of an antitrust market. Ease of entry would prevent anticompetitive outcomes. Nonetheless, existing sources of competition should ease any concerns about anticompetitive outcomes.

a) Ease of Entry Is Exemplified by CitySights Entry into the NYC Marketplace

37. CitySights' entry into providing transportation tour services reflects the type of entry that can occur to constrain an exercise of market power. CitySights LLC was incorporated in November 2004. To begin providing transportation tour services, CitySights incurred costs for regulatory approval, purchased double-decker buses, insurance, ticket sales agents, tour bus drivers and guides, marketing, and established back-office support and management operations. In Spring 2004, CitySights contracted with Craftsmen Limousine to construct a tour bus by placing an upper-deck on a Freightliner chassis. This initial model had only a top level for passengers. The bus was delivered in January 2005, inspected, and with a few modifications, was approved by the New York State Department of Transportation. CitySights then purchased the test bus and seven

¹⁵ Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, Issued April 2, 1992, at §1.0.

additional buses. By the end of 2005, CitySights had ordered a total of 15 buses.¹⁶ The buses were purchased for about \$225,000 per bus.

38. In addition to obtaining approval for the buses from the New York State Department of Transportation, CitySights also applied for and obtained a sightseeing license from the New York City Department of Consumer Affairs. The application required that CitySights' buses meet emission requirements. The fee for the license was \$35 per bus. Every two years, CitySights must renew these licenses. Next, CitySights applied to the New York City Department of Transportation for bus stops where passengers could be picked up and off-loaded. CitySights received approval for 50 stops.¹⁷
39. Another entry cost for CitySights was incurred for ticket sellers. These agents were found by advertising and word of mouth, and CitySights initially paid them a commission of \$4 for each ticket sold. CitySights also rented ticketing machines for approximately \$30 per month and purchased approximately \$5,000 of software to run the machines. CitySights also engaged the services of tour bus drivers and guides at an initial approximate cost of \$12 per hour for drivers.¹⁸
40. CitySights also incurred marketing costs of less than \$30,000 to design a marketing brochure, print brochures, design the graphics, and design a website including ability and commission for purchasing tickets online. In addition, CitySights set up back-office support and management services for its tour operations.¹⁹ The totality of these costs was modest. The largest expense was the acquisition of double-decker buses, which are mobile assets that can be sold off in the event that entry is unsuccessful. The non-recoverable sunk cost of entry was very low relative to the expected revenues generated.
41. In sum, CitySights began operations in May 2005 with eight tour buses. By 2009, CitySights operated 62 double-decker buses and had committed to build another eight buses that it contributed to the Twin America joint venture. Exhibits 8 and 9 show the evolution of CitySights ownership and operation of double-decker and coach buses.

¹⁶ In 2006, CitySights decided that it would manufacture its own buses by purchasing used transit buses and hiring two body shops to convert the transit buses to double-decker buses. The costs ranged from \$90,000 to \$150,000, depending on the condition of the transit bus. Verified Statement of Zev Marmurstein at ¶ 9.

¹⁷ Interview with CitySights.

¹⁸ Interview with CitySights.

¹⁹ Interview with CitySights.

Exhibit 10 shows the number of passengers served over time. I have reviewed the confidential profit & loss statements produced by CitySights and have confirmed that its profitability is affected by seasonality, being generally negative in the fourth and first quarters of each year as tourism slows down in New York, but CitySights has been profitable from the start of its operations.

**b) Costs and Timing of Entry and Exit Support Ability of
Potential Entrants to Discipline an Exercise of Market Power**

42. The Horizontal Merger Guidelines defines ease of entry as "timely, likely, and sufficient in its magnitude, character and scope to counteract the competitive effects of concern."²⁰ The agencies generally accept entry that would occur within two years, from initial planning to significant market impact, as meeting these guidelines. Planning, design and management, permitting, licensing, government and regulatory approvals, acquisition of buses, operation of support facilities, and promotion, marketing, and distribution, would all be milestones considered in assessing whether new entry would be doable within two years. Entry would be considered likely if it would be profitable to enter given pre-merger prices, in a scenario where those prices might hypothetically be elevated to supracompetitive levels by the merger at issue. The likelihood of entry also recognizes that the scale of entry can affect prices in the market at the time of entry. If the scale required to enter is larger than the likely available sales opportunities, entry could depress prices below the level necessary to be profitable. Entry would be unlikely if the minimum viable scale is larger than the sales opportunities available to the potential entrant. In assessing the available sales opportunities, the Guidelines consider (1) the output reduction of potential or hypothetical concern associated with the merger, (2) the entrant's ability to capture a share of expected growth in the market, (3) the entrant's ability to divert sales from the merging parties, and (4) any other reduction in output from the incumbent's response to new entry.²¹ The agencies consider entry to be sufficient if it

²⁰ Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, Issued April 2, 1992, at § 3.0.

²¹ Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, Issued April 2, 1992, at §3.3.

is likely to restore output to the level that existed prior to the merger. Generally, if such new entry is timely and likely, it will meet the sufficiency criteria.

43. I have applied these guidelines to transportation tour services in New York City. I determined that conditions support ease of entry in this marketplace. CitySights entered the marketplace in less than one year, well within the Merger Guidelines threshold for committed and uncommitted entry. Reaching a minimum viable scale of operations to sustain entry occurred at a relatively low level. CitySights' successful entry provides economic support for the likelihood of successful entry by other firms in the event of a hypothetical sustained supra-competitive price increase by the joint venture. The largest investment is the acquisition of buses. However, CitySights' entry demonstrates that entry can evolve over time with the initial acquisition of only a few buses with more buses added as operations grow. I understand that double-decker buses can be obtained from a variety of sources.²²
44. Both Coach USA and CitySights had previous experience as operators of passenger transportation businesses. Their entries into transportation tour services were effectively repositionings from an adjacent service into this demand segment. The ability to acquire double-decker buses and secure regulatory approval makes existing rivals offering non-double-decker bus services, such as motorcoach tours, water tours, or air tours, likely firms to reposition into double-decker tours in the event the joint venture were to raise prices in a non-transitory fashion above competitive levels. These existing tour operations already have the infrastructure needed to sell tickets and market to consumers, and the knowledge to operate double-decker bus tours in New York City.

c) Experience in Other Geographic Markets Supports Ease of Entry

45. Transportation sightseeing tours are available in cities other than New York City. Exhibit 11 shows transportation sightseeing tours in Chicago, Washington DC, Los Angeles, San Diego, San Francisco, Miami, New Orleans, New York, Paris, and London. In addition, Big Buses in London recently entered the Philadelphia market. LesCar Rouge entered the Washington DC marketplace through a merger with Open Top Sightseeing in 2006, and

²² Double-decker bus manufacturers include Alexander Dennis, Ayats, Marcopolo S.A., Zhongda Industrial Group, Anhui Ankai Automobile Co. Ltd., Van Hool, and Ashokeley Land.

expanded to San Francisco in 2007 and Las Vegas in July 2009. Recent entry in other markets is indicative of ease of entry into transportation tour services and suggests that entry could and likely would occur in New York City if prices were to increase above competitive levels.

46. These data also suggest that the number of tour bus operations is relatively small in all cities. A small number of competitors, however, is not determinative of non-competitive markets. The ease of entry demonstrated by CitySights' entry in New York City and recent entry in other markets suggests that a small number of players may be competitively sufficient and may be preferable from the public interest perspective in terms of quality and efficiency of service, environmental impact, and traffic congestion.

VI. The NYSAG's Assessment of Efficiencies and Synergies Is Inconsistent with the Economic Evidence

47. I have seen no economic data to suggest that either CitySights or Gray Line exercised any market power in providing transportation tour services or that the joint venture has changed the competitive dynamics of the marketplace. Rather, CitySights' entry and the strategic adaptations of the joint venture are evidence that the marketplace is dynamically competitive, and that the consolidation is bringing pro-competitive efficiencies to its operations and to its customers. The NYSAG's evaluation of the joint venture is inconsistent with the economic facts.

A. The Relevant Markets Proposed by the NYSAG Lack Economic Support

1. Shares Calculated by the NYSAG Do Not Determine Whether a Joint Control Agreement Will Increase Market Power or Facilitate Its Exercise

48. Market power is the ability profitably to increase price above competitive levels and exclude competitors. In general, market power can exist only where a firm or a group of firms acting in concert have a sufficiently large share of a relevant market. A firm or group of firms with a small market share will generally find attempts to manipulate market-wide prices unprofitable because other firms in the market will have an incentive to undercut them, thereby restoring the competitive balance between demand and supply.

This is a core concept of antitrust analysis. If Twin America does not have market power in a relevant market, then it cannot profitably or effectively raise prices by restricting the provision of tour bus services.

49. The NYSAG's office provides no economic support for its assertion that Twin America has market power and can unilaterally raise prices above competitive levels. It merely asserts this proposition on the basis that it identifies only one other provider of double-decker tours in New York City and that operator provides only one of four tours identified by the NYSAG as competitively relevant. As an economist, I do not find this assertion consistent with either the economic evidence on ease of entry or with the net benefits to consumers and the public interest from the joint venture's formation. I address my specific concerns with the NYSAG's analysis below.

2. The Relevant Markets Asserted by the NYSAG Do Not Take into Account the Commercial Realities and Dynamic Nature of the Competitive Environment in Which Twin America Competes

50. NYSAG identifies major tour routes as (1) downtown loop, (2) uptown loop, (3) all around town loop, and the (4) Brooklyn loop. The NYSAG counts whether the tour operator, CitySights and Gray Line and other tours operators, provide the tour. For example, since CitySights offers a tour that approximates each of these tours, it receives a count of four. Gray Line receives a similar count. The only other competitor identified by the NYSAG as offering one of these tours is Big Taxi, which offers the Downtown Loop tour. It receives a count of one. This methodology enables the NYSAG to find a total market offering of 9 tours, of which CitySights and Gray Line each account for 44.5% and Big Taxi 11% of the total number of tours offered. It concludes that the joint venture would have about 90% of the market.
51. This analysis is grossly misleading. The methodology ignores the actual sales associated with each tour, which differ considerably. For CitySights, its ridership numbers show that the Downtown bus tour accounts for 65% of riders compared with the Uptown tour's 20%, the Brooklyn tour at 5%, and the Night tour at 10%. For Gray Line, the majority of passengers purchased the All Loops sightseeing tour (64%), with the Downtown Loop

accounting for 16.7%, Essential NY for 16.6%, and Uptown loop for 2.8%.²³ Moreover, the NYSAG analysis artificially limits the relevant market to just four routes and ignores the availability of a wide array of alternative tours by all other transportation tour operators which compete for tourists' time and money.

52. Moreover, bus routes are not markets. Consumers can readily substitute, routes can be easily reconfigured, and suppliers can reposition assets to serve particular routes in response to any supra-competitive pricing. For example, if a hypothetical monopolist were to raise the price for these particular tours, another transportation tour operator could acquire double-decker buses, obtain regulatory approval, ticket agents, and drivers and guides, and compete for tourists in less than one year's time. For these reasons, I disagree with the NYSAG that individual bus tours and their current providers represent a relevant market and market participants for purposes of assessing the potential competitive effects arising from the Twin America joint venture.
53. In sum, the NYSAG's analysis ignores the ability of other transportation tour operators to reposition to compete with the joint venture if prices were to rise to supra-competitive levels. The NYSAG's analysis is static and fails to acknowledge or incorporate the commercial realities and dynamic nature of competition within the marketplace that I discuss earlier in this report.

B. The NYSAG's Assessment of Efficiencies and Synergies Is Inconsistent with the Economic Evidence

54. The NYSAG recognizes Twin America's cost savings, but interprets these savings as creating barriers to entry for potential rivals, and harm to consumers or employees. Specifically, the NYSAG identifies (1) increased barriers to entry through volume discounts, (2) firing or reducing the hours or wages of Twin America employees, and (3) reducing the number of buses or frequency of tours. The NYSAG's assessment of efficiencies is misguided and inconsistent with economic theory and antitrust economic analysis. I address these concerns below.

²³ Audience Research & Analysis, September 2008 entitled "Gray Line Hop-on Hop-off Tours, A Ridership Study" CS0000936-968 at 942.

1. The Efficiencies and Synergies Created by the Joint Venture Do Not Increase Barriers to Entry

55. The NYSAG asserts that the joint venture's fuel, spare parts, and insurance cost savings would likely only be achieved through volume discounts, and new entrants would be unable to obtain these same economies of scale. As I describe in Section IV.A above, Twin America's fuel, spare parts, and insurance cost savings are not generated from new volume discounts but rather by applying the parties' experience in efficiently operating and maintaining buses to the contributed bus assets. Therefore, volume discounts cannot be a barrier to entry to potential rivals. The minimum viable scale of operations to be successful is low, as exemplified by the successful CitySights' entry in 2005 with just eight buses and expansion to 70 buses within just a few years.

2. Cost Savings Resulting From Rationalization of Productive Assets Increase Total Welfare

56. The NYSAG further asserts that the claimed cost savings in advertising expenses would likely derive from consolidating the number of advertisements or firing employees. Likewise, The NYSAG asserts that Twin America's elimination of duplicative back-office and other administrative and management functions is harmful to employees, implying that these savings are not in the public's interest.

57. The NYSAG fails to recognize in its assessment that the public interest is served by efficient allocation of labor and physical assets. Consumer welfare and, in turn, the public's interests are well-served when the same output and quality of service can be achieved with fewer resources and at lower costs. The Twin America joint venture meets these goals. The joint venture does not eliminate any bus routes or options for consumers. In fact, by combining its services, the joint venture will be able to offer consumers more frequent access to buses on the same routes. It will achieve this enhancement in services with fewer resources and at lower costs by eliminating duplicative advertising and back-office operations. The trimming of redundant employees results in total welfare benefits by making these productive, but under-employed, workers available to other productive operations, possibly even existing or potential new rivals. These types of cost savings have long been recognized as benefiting the public interest.

3. Cost Savings Do Not Need to Be Directly Passed on to Consumers in the Form of Lower Prices in Order to Benefit Consumers and the Public Interest

58. I take issue with the NYSAG's assertion that consumers only benefit from a merger when cost savings from the merger are passed along in the form of lower prices. Cost savings need not be passed on to consumers immediately through lower prices in order for consumers to benefit from the cost savings created by the Twin America joint venture. As I have indicated above, consumer welfare and the public interest are enhanced when the same output and services can be provided at lower costs with fewer resources. In general, such efficiencies are likely to inure to consumer welfare over time, if not right away, as the lower costs allow more and higher quality of service to be sustainable and motivated in marketplaces subject to new demands and dynamic forces of competition.
59. As I explained above, the ease of entry into transportation tour services also constrains existing participants from raising prices above competitive levels. There is no economic evidence that the Twin America joint venture is able to exercise market power to raise prices by restricting output when faced with easy entry of new rivals or expansion by existing rivals. In such a setting, cost savings and synergies of operations are likely to be passed on to consumers in the form of lower prices and higher quality of service over time and as restored consumer demand permits.

C. The Joint Venture's Impact on Ticket Agents Is Not Anticompetitive

60. The NYSAG expresses concern that the joint venture can eliminate competition for marketing with ticket agents, such as concierges, museums, helicopter, and boat tour operators, and that the joint venture may foreclose entrants from gaining access to these sales sources due to volume discounts, exclusivity, or lack of bargaining power.²⁴ Based on my review of the economic evidence produced, I believe the NYSAG's concerns are unfounded. Twin America depends on independent ticket agents to sell its products. Many of these agents, such as concierges, museums, helicopter, and boat tour operators, also sell competing products. Twin America must pay ticket agents enough commission

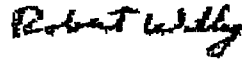
²⁴ NYSAG Comments at 6.

to induce these agents to sell Twin America's products. If it reduces commissions below the level necessary to induce a sale, Twin America makes less money. On the other hand, it makes no economic sense to pay a commission greater than necessary to induce the ticket agent to make the sale.²⁵

61. The majority of Twin America's ticket sales are made by street sales. These agents literally stand on the street attempting to convince consumers to buy a ticket. The consumer has many sightseeing options, as I described above in Section V.B. Twin America has no economic incentive to reduce commissions to these ticket agents to a level that would reduce their incentive to make a sale. This would represent not only a loss of commission to the ticket agent, but also a loss of resulting revenues to Twin America.

I declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on November 17, 2009



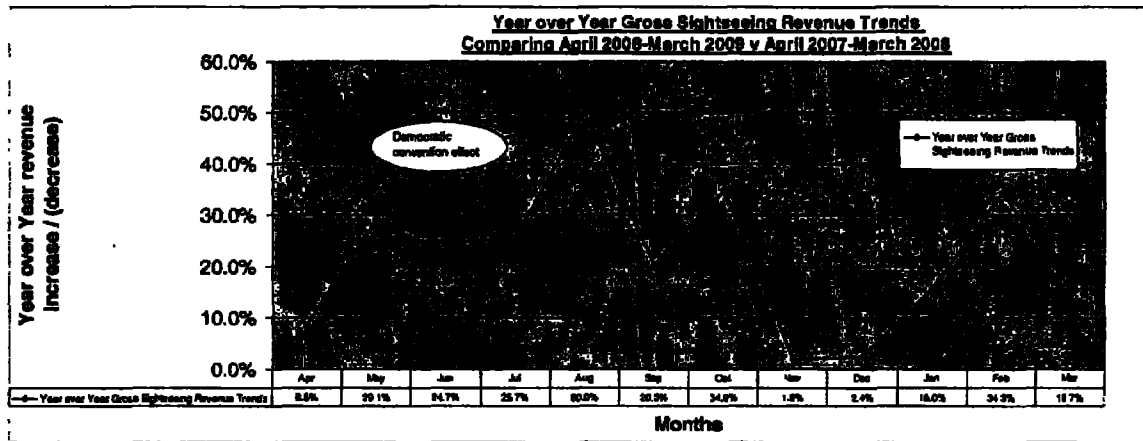
Robert D. Willig

²⁵ The NYSAG may be concerned that the joint venture will enable Twin America to reduce payments to certain ticket agents such as concierges or other particular ticket agents. Reduced commissions are not in and of itself evidence of an exercise of market power by the joint venture. The reduced payment may reflect previous overpayment of commissions due to the market power exercised by the ticket agent. For example, I note that both CitySights and Gray Line paid commissions to certain hotel concierge services, specifically CGS, that were significantly higher than those paid to other ticket agents. Higher concierge commissions are not necessarily in consumers' interest or the public interest. This may reflect the market power of concierges due to incomplete information available to tourists rather than socially beneficial competition among double-decker bus tour operators.

EXHIBITS

EXHIBIT 1

Chicago Trolley & Double-Decker Co.



Gray Line New York City

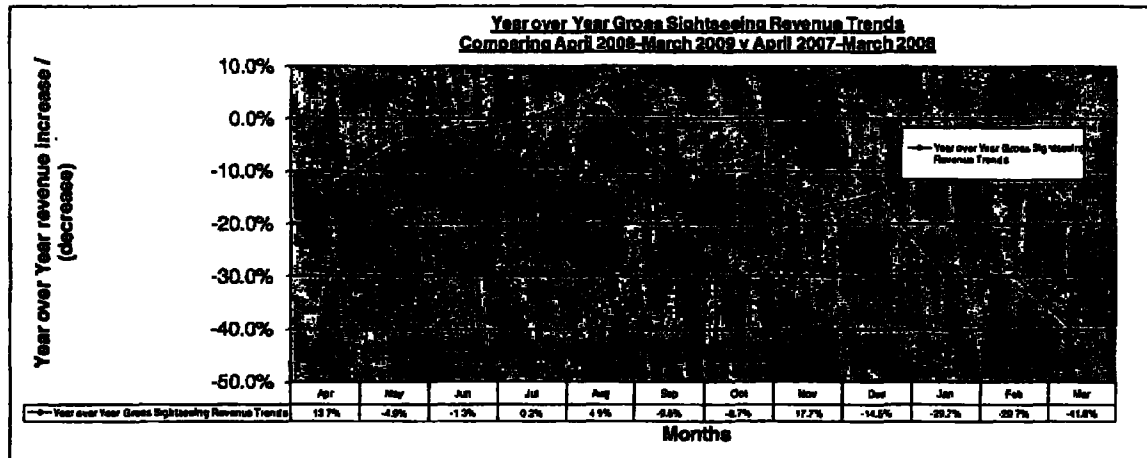


EXHIBIT 2

Tourists in New York City 2000-2009

Year	Foreign Tourists (millions)	Total Tourists (millions)	Y/Y % Change in Total Tourists
2000	N/A	36.2	-0.5%
2001	N/A	35.2	-2.8%
2002	N/A	35.3	0.3%
2003	N/A	37.8	7.2%
2004	6.0	39.9	5.6%
2005	6.6	42.6	6.8%
2006	7.0	43.8	2.8%
2007	N/A	45.5	3.8%
2008	9.8	47.0	3.3%
2009	N/A	44.5	-5.3%

Source: NYC & Co.; Fickenscher, Lisa, "Rising Hotel Rates Price Visitors Out," *Crain's New York Business* 22, No. 40, October 2, 2006; Fickenscher, Lisa, "Tourism Slowdown Bites Big Apple," *Crain's New York Business* 23, No. 31, July 30, 2007; Fickenscher, Lisa, "Flocking to the Big Apple, at Least for Now," *Crain's New York Business* 24, No. 1, January 7, 2008; Fickenscher, Lisa, "Summer Deals Keep NYC a Tourist Trip," *Crain's New York Business* 25, No. 22, June 1, 2009.

Note: Total number of tourists in 2009 is an estimate according to New York's tourism bureau, NYC & Co. Y/Y (year-over-year) percent change compares the results of a year with the year preceeding it.

EXHIBIT 3

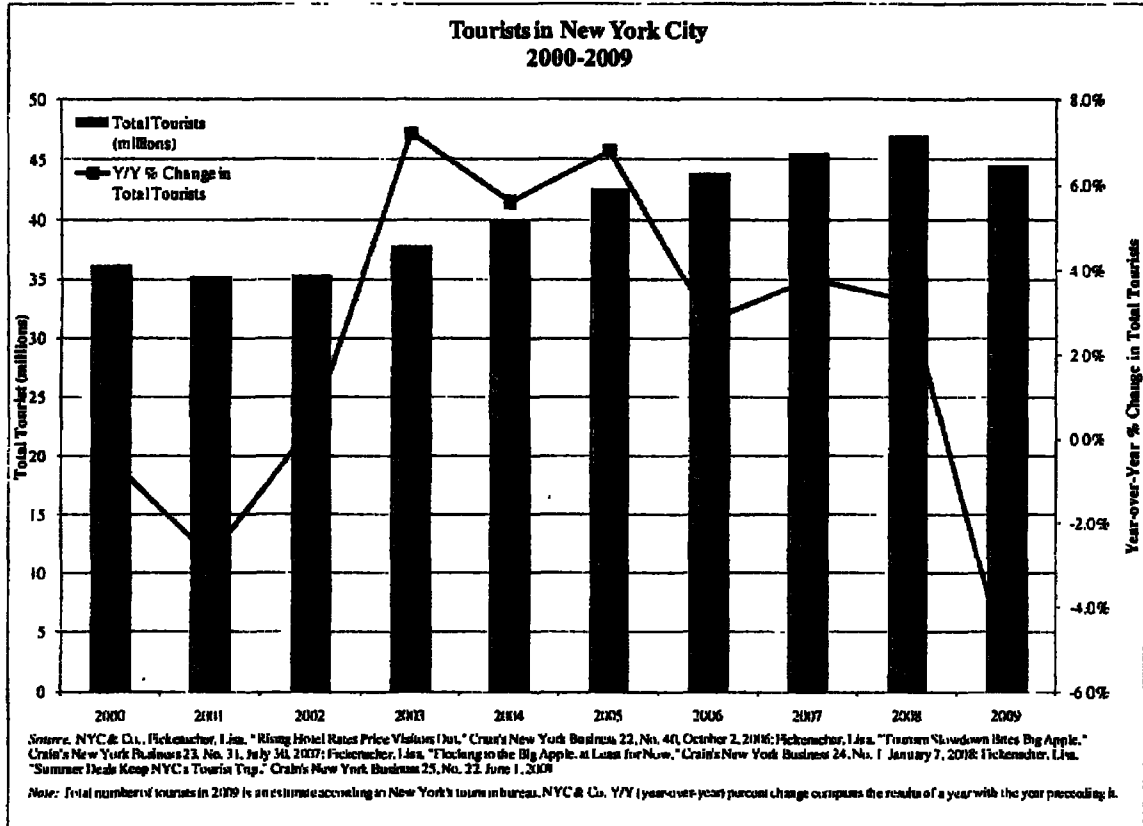


EXHIBIT 4

Hotel Room and Occupancy Rates in New York City January 2005 - April 2009

Time Period	Avg. Room Rate	Avg. Occupancy Rate
January-July 2005	\$217	85%
January-July 2006	\$241	84%
January-June 2007	\$273	84%
January-February 2008	\$358	83%
April 2008	\$302	87%
January-February 2009	\$304	65%
April 2009	\$224	85%

Source: Fickenscher, Lisa, "Rising Hotel Rates Price Visitors Out," *Crain's New York Business* 22, No. 40, October 2, 2006; Fickenscher, Lisa, "Tourism Slowdown Bites Big Apple," *Crain's New York Business* 23, No. 31, July 30, 2007; Fickenscher, Lisa, "Summer Deals Keep NYC a Tourist Trip," *Crain's New York Business* 25, No. 22, June 1, 2009.

EXHIBIT 5

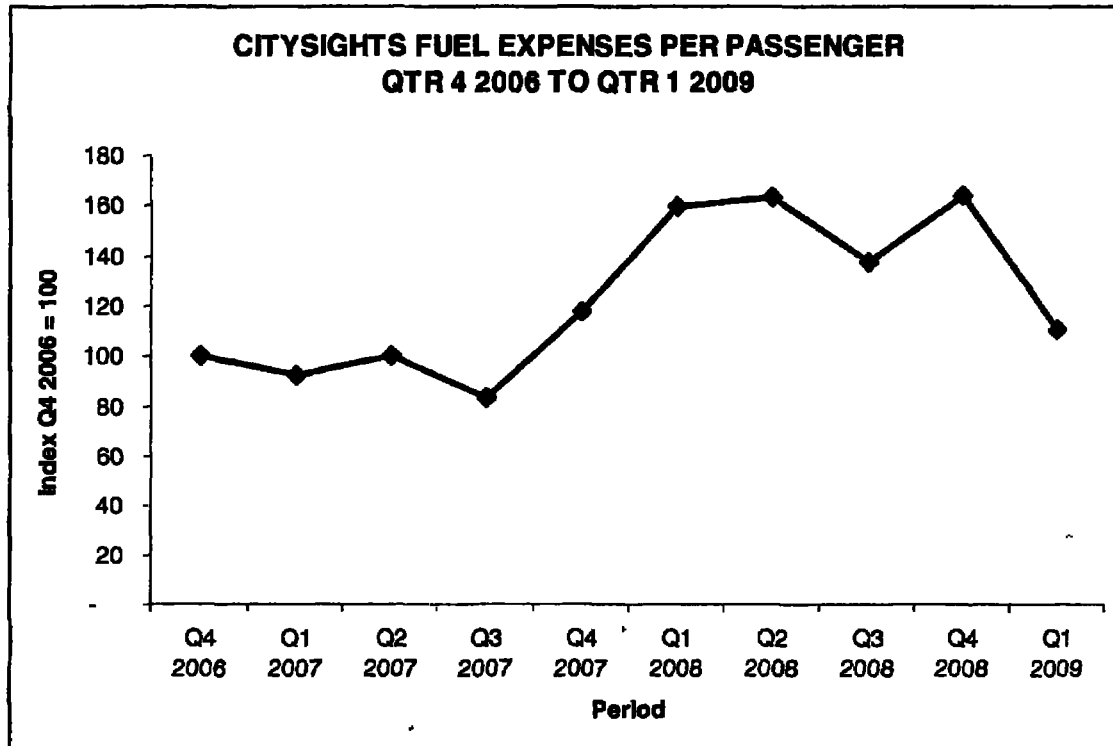


EXHIBIT 6

CitySights Tours December 2008

Tour
A Taste of NY Liberty Helicopters Tour
AA/Town + E/S/Bldg + SOL-El Ferry
AA/Town + E/S/Bldg A/Tour + SOL-El Ferry
AA/Town + The New Yorker Helicopter Tour
AA/Town Tour
AA/Town, E/S Bldg, Woodbury C
AA/Town, SOL-El Ferry + Top of Rock
AA/Town, T/R Obsv, Woodbury C
All Around Town + Big Apple Liberty Helicopter
All Around Town + Empire State Building Observatory
All Around Town + Madame Tussauds
All Around Town + S/O/Liberty Ferry
All Around Town + T/O/Rock Observatory
Brooklyn Tour
Circle Line 2 Hour Cruise
Circle Line 3 Hour Cruise
Circle Line 75 min Cruise
D/Town + NY-NY Liberty Helicopter
D/Town, SOL-El Ferry + E/S/Bldg
D/Town, SOL-El Ferry + Top of Rock Observatory
Downtown + E/S/Bldg + NY Skyride
Downtown + E/S/Bldg Observatory
Downtown + Madame Tussauds
Downtown + NY W/way 90min Cruise
Downtown + S/O/Liberty Ferry
Downtown + Taste/NY Liberty Helicopter
Downtown + Top-of-Rock Observatory
Downtown + Unique Manhattan Heli Tour
Downtown Tour
Empire State Building Observatory
Escorted Language Manhattan Tour
Express Unique Manhattan Heli Tour
Harlem Gospel Tours
Land & Sea Thrill Ride
Lights of the Holiday Tour
Madame Tussauds
New York Skyride
Night Tour
Night Tour + Empire State Bldg Observatory
Night Tour + T-O-Rock
NY Waterway 90 min Harbor Cruise
NY-NY Liberty Helicopter
Sex & the City HotSpots
Shop Hop Top 3Day w T/O/Rock
Shop Hop Top 3Day w/E/S/Bldg
Statue of Liberty Ferry
Super Downtown 1 w/Top of Rock Observatory
Super Downtown 2 w/Empire State Building Observatory
Super New York 1 w/Top of Rock Observatory
Super New York 2 w/Empire State Building Observatory
The Big Apple Liberty Helicopter Tour
The New Yorker Helicopter Tour
Top of Rock Observatory
Unique Manhattan Heli Tour
Uptown Treasures & Harlem Tour
Woodbury Common Outlet Mall

Sources: CitySights

Note: The same price was applied to all variations of all around town, shop hop, and downtown tours.

EXHIBIT 7

Gray Line New York Tours

Code	Tour Description
<i>City Tour by Double Decker Bus</i>	
AL	All Loops
AL3	All Loops/72 Hour At Time of Original Purchase Only
ALTOR	All Loops with Top of the Rock
BL	Brooklyn Loop
DML	Downtown Loop
DNL	Downtown & Night Loop
ENC	Essential New York
FSNY	Freestyle New York
SNT	Statue By Night Tour
ENS	Classic New York
NL	Night Loop/Holiday Lights
UD	UpTown & Downtown Loop
UML	Uptown Loop
UNL	Uptown & Night Loop
INYM	In A New York Minute
VPT	3-Day VIP Package
SPAHL	NYC Ducks & All Loops Combo (Mon - Wed)
SPAHLW	NYC Ducks & All Loops Combo (Thurs - Sun)
<i>Grayline Tours not on a Double Decker Bus</i>	
SPH	NYC Ducks(Mon - Wed)
SPHW	NYC Ducks(Thurs -Sun)
HCHT	NYC Heritage Tour
MC	Manhattan Comprehensive
ML	Multilingual Tour
MLA	Multilingual Tour & All Loops
SI	ShowBiz Insider Tour
DLS	Downtown & Statue Liberty
DLE	Downtown & Empire State Building
DSI	Discover Staten Island
<i>Combination Tours (Bus-Boat-Helicopter)</i>	
MBS	Manhattan By Sail
MBSAL	Manhattan By Sail With All Loops
GAHC	Statue of Liberty Express
LWT	Land & Water Taxi
MW3	WHEELS & WATER 3HR
MW2	WHEELS & WATER 2HR
NYW3	LAND & SEA & ALL LOOPS
NYW4	LAND & SEA & NIGHT LOOP
UT	Manhattan Helicopter
MNUTD	Manhattan Helicopter Land & Sky
HEL2	Liberty Helicopter
HLLA	LAND & AIR w ALL LOOPS
<i>Day Trips</i>	
NF	NIAGARA FALLS(April 5 - June 14)
NF	NIAGARA FALLS(June 15 -Sept 15)
WA	WASHINGTON BY TRAIN
WC	WOODBURY COMMONS
<hr/>	
Total Tours Offered	44

Source: Gray Line Tour Prices 07-09.xls

EXHIBIT 8

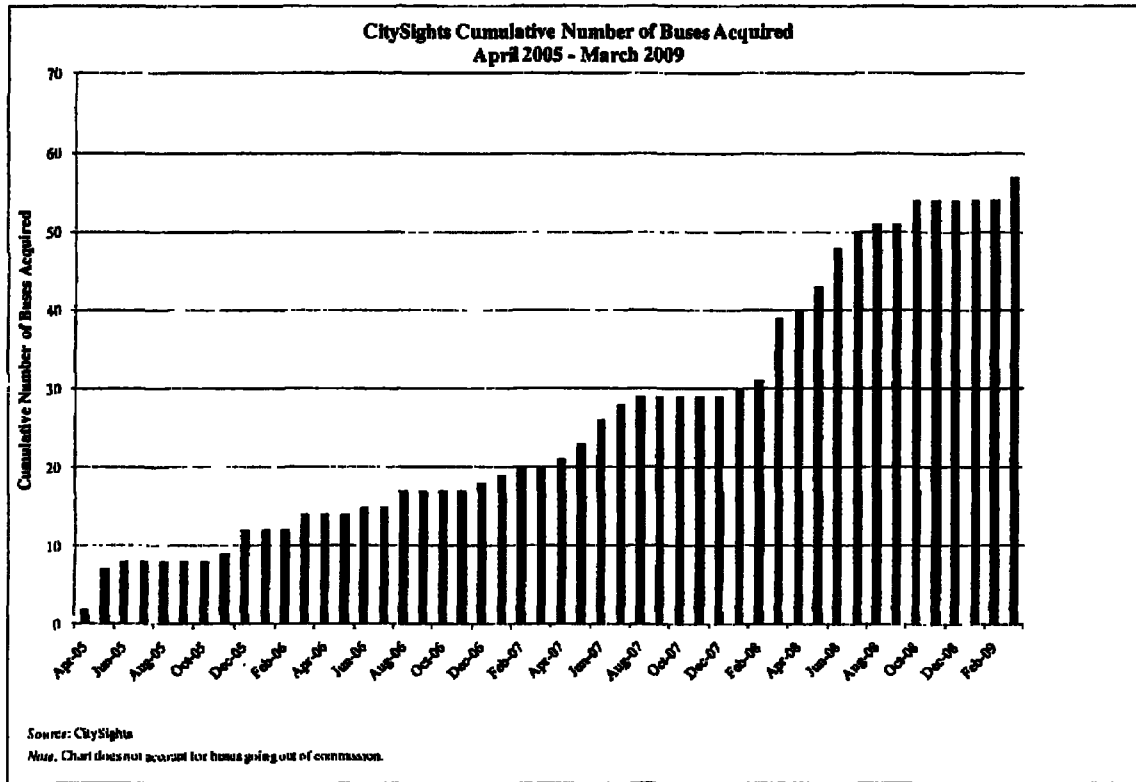


EXHIBIT 9
CitySights Average Number of Buses in Operation by Type
August 2006 - March 2009

Month-Year	Avg. Number of Double Deckers	Avg. Number of Coach	Avg. Number of Total Buses	Y/Y% Change in Avg. Total Buses
Aug-06	16	1	17	N/A
Sep-06	16	1	16	N/A
Oct-06	15	0	15	N/A
Nov-06	15	0	15	N/A
Dec-06	16	1	16	N/A
Jan-07	10	2	12	N/A
Feb-07	8	3	11	N/A
Mar-07	11	2	13	N/A
Apr-07	16	0	16	N/A
May-07	21	0	21	N/A
Jun-07	24	0	24	N/A
Jul-07	27	0	27	N/A
Aug-07	29	0	29	73.6%
Sep-07	26	0	26	62.2%
Oct-07	26	0	26	72.6%
Nov-07	27	0	27	77.3%
Dec-07	30	1	31	91.5%
Jan-08	24	1	24	101.1%
Feb-08	21	1	22	94.0%
Mar-08	26	2	27	110.0%
Apr-08	32	1	33	107.7%
May-08	38	1	39	89.8%
Jun-08	43	2	45	85.7%
Jul-08	48	2	50	83.6%
Aug-08	50	2	52	79.6%
Sep-08	41	2	43	62.8%
Oct-08	41	2	43	63.1%
Nov-08	40	2	42	55.1%
Dec-08	39	2	41	30.0%
Jan-09	26	2	28	16.8%
Feb-09	28	2	30	36.2%
Mar-09	40	2	42	55.9%

Source: Daily sales recap.xls; Daily sales recap 2008.xls; Daily sales recap 2009.xls; CS0000006-15

Notes: Table considers days in which the total number of buses used was positive. Numbers may be off due to rounding. Y/Y (year-over-year) percent change compares the results of a month-year with the same month in the year prior.

EXHIBIT 10
CitySights Number of Passengers
August 2006 - March 2009

Month-Year	Passengers	Y/Y % Change in Passengers
Aug-06	22,931	N/A
Sep-06	15,725	N/A
Oct-06	13,395	N/A
Nov-06	10,760	N/A
Dec-06	17,916	N/A
Jan-07	8,791	N/A
Feb-07	10,873	N/A
Mar-07	12,573	N/A
Apr-07	18,563	N/A
May-07	21,590	N/A
Jun-07	34,789	N/A
Jul-07	53,046	N/A
Aug-07	50,778	121.4%
Sep-07	33,257	111.5%
Oct-07	39,823	197.3%
Nov-07	30,798	186.2%
Dec-07	41,063	129.2%
Jan-08	22,543	156.4%
Feb-08	20,468	88.2%
Mar-08	37,436	197.7%
Apr-08	38,944	109.8%
May-08	63,583	194.5%
Jun-08	75,680	117.5%
Jul-08	100,570	89.6%
Aug-08	112,593	121.7%
Sep-08	64,867	95.0%
Oct-08	63,010	58.2%
Nov-08	45,661	48.3%
Dec-08	58,938	43.5%
Jan-09	26,615	18.1%
Feb-09	26,432	29.1%
Mar-09	38,956	4.1%

Source: Daily sales recap.xls; Daily sales recap 2008.xls; Daily sales recap 2009.xls; CS0000006-15

Notes: Table takes into account end-of-the-month adjustments. Y/Y (year-over-year) percent change compares the results of a month-year with the same month in the year prior. Numbers may be off due to rounding.

EXHIBIT 11

Selected Sightseeing Bus Tours in Chicago, Illinois

Operator	Days Operational	Tour Duration	Ticket Price		Types of Tours/Destinations
			Adult	Child	
Chicago Architecture Foundation	Sunday and Wednesday	3.5 hours	\$40.00	\$35.00	2016 Highlights by Bus
	Sunday through Saturday	1.5 hours	\$32.00 (Sat/Sun), \$28.00 (Mon-Fri)	\$32.00 (Sat/Sun), \$28.00 (Mon-Fri)	River Tour of Chicago Architecture
Chicago Bus Tours and Sightseeing	Tuesday through Sunday	2.25 hours	\$34.95	\$14.95	Chicago City Mini-Bus Tour
Chicago History Museum	Saturday (Oct 17, Nov 14, Dec 12)	4 hours	\$45.00	\$45.00	Devil in the White City (World's Columbian Exposition)
	Saturday (Oct 24)	4 hours	\$45.00	\$45.00	The Wizard of Oz
	Saturday (November 7)	4 hours	\$45.00	\$45.00	Murder and Mystery in Chicago
	Saturday (Dec 5)	4 hours	\$45.00	\$45.00	Secret Spaces
Chicago Trolley & Double Decker	Sunday through Saturday	2 hours	\$29.00	\$17.00	Hop on Hop Off Bus Tours
Gray Line	Sunday through Saturday (May-Sep)	4 hours	\$45.00	\$23.00	Land and Lake Tour
	Jun 15, 2009 and Sep 7, 2009	3 hours	\$40.00	\$40.00	American Girl Historical Chicago Tour
	Saturdays	4 hours	\$34.00	N/A	Chicago Club Crawl
	Saturdays	4 hours	\$43.00	\$30.00	The White City - 1893 Columbian Exposition Tour - Bus and Walk Tour
	Sunday through Saturday	2 hours	\$23.00	\$12.50	Panoramic & Scenic North Side Tour - Bus and Walk Tour
	Sunday through Saturday	2 hours	\$23.00	\$12.50	Historic Chicago South Shore Tour - Bus Tour with Stops
	Sunday through Saturday	4 hours	\$40.00	\$20.00	Inside Chicago - The Grand Tour: Bus Tour with Stops
	Sunday through Saturday	Varies	\$63.00	\$33.00	Day on the Museum Campus - Bus Tour with Stops
	Sunday through Saturday (Oct-May)	4.5 hours	\$52.00	\$32.00	Grand Tour & Chicago Style Pizza

Sources: Company websites and third parties. Websites accessed on October 14, 2009, and November 15, 2009.

Note: Age range of "child" may not be the same across tour bus operators. For some operators, tours shown represent a sampling of all tours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as Internet bookings or group deals. Chicago Trolley & Double Decker Co. is owned by Coach USA. The Gray Line company operating in Chicago is a companion of Coach USA.

Selected Sightseeing Bus Tours in San Francisco, California

Operator	Days Operational	Tour Duration	Ticket Price		Types of Tours/Destinations
			Adult	Child	
San Francisco Comprehensive	Sunday through Saturday	Varies	\$65.00	\$30.00	Bus Tour Visiting Various City Sights (Hop on Hop Off)
Sightseersworld	Sunday through Saturday	Varies	\$70.99	\$51.99	5 different loops of the city, including Alcatraz
	Sunday through Saturday	Varies	\$25.99	\$14.49	Downtown Bus Tour (Hop on Hop Off)
	Sunday through Saturday	Varies	\$45.99	\$27.99	4 City Loops (Hop on Hop Off)
Gray Line	Sunday through Saturday	1.25 hours	\$14.00	\$8.00	San Francisco Trolley Hop
	Sunday through Saturday	2.25 hours	\$33.00	\$22.00	San Francisco Trolley Hop with Bay Cruise
	Sunday through Saturday	2.25 hours	\$27.00	\$16.00	San Francisco Trolley Hop with Aquarium of the Bay Tour
	Sunday through Saturday	2.5-3.5 hours	\$24.00	\$12.00	Motorized Cable Car Tour
	Sunday through Saturday	3.5 hours	\$43.00	\$26.00	Motorized Cable Car Tour with Bay Cruise
	Sunday through Saturday	3.5 hours	\$41.00	\$20.00	Deluxe Guided Bus Tour
	Sunday through Saturday	4.5 hours	\$60.00	\$34.00	Deluxe City Tour with Bay Cruise
	Sunday through Saturday	4.5 hours	\$50.00	\$26.00	Deluxe City Tour with Wax Museum Tour
Open Top	Sunday through Saturday	2-1/2 hours	\$66.00	\$34.00	Open Top by Night
	Sunday through Saturday	1-3/4 hours	\$30.00	\$16.00	Hop-On, Hop-Off
	Sunday through Saturday	Varies	\$54.00	\$29.00	Sausalito
	Sunday through Saturday	Varies	\$50.00	\$36.00	Bay Quakers
	Sunday through Saturday	Varies	\$59.95	\$32.95	Academy of Sciences—Golden Gate Park
San Francisco Tours	Thursday through Sunday	7 hours	\$90.99	\$65.99	San Francisco City and Alcatraz Tour (Minibus)
	Sunday through Saturday	7 hours	\$69.99	\$40.99	Alcatraz and San Francisco Deluxe City Combo Tour (Bus)
	Sunday through Saturday	Varies	\$22.99	\$14.99	San Francisco Hop-on Hop-off Double Decker Bus Tour (Bus)

Sources: Company websites and third parties. Websites accessed on October 21, 2009, and November 15, 2009.

Note: Age range of "child" may not be the same across tour bus operators. For some operators, tours shown represent a sampling of all tours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as Internet bookings or group deals.

EXHIBIT 11 (CON'T)

Selected Sightseeing Bus Tours in Los Angeles, California

Operator	Year Established	Days Operated	Passenger		Ticket Price		Types of Tours/Destinations
			Capacity per Bus	Tour Duration	Adult	Child	
LA City Tours	1981	Sunday through Saturday	N/A (Minibus)	5.5 hours	\$65.00	\$30.00	LA City Tour, Movie Star Homes
		Sunday through Saturday	N/A (Minibus)	2 hours	\$36.00	\$26.00	Hollywood's Movie Star Homes
		Sunday through Saturday	N/A (Minibus)	2 hours	\$49.00	\$39.00	Hollywood Tour & Movie Stars' Homes Tour
		Sunday through Saturday	N/A (Minibus)	5.5 hours	\$65.00	\$30.00	Beach Tour & Shopping Tour
Los Angeles Shuttle Tours	N/A	Sunday through Saturday	35	5 hours	\$60.00	\$30.00	Los Angeles Shuttle Tour
Golden State Tours	N/A	Sunday through Saturday	30	4.5 hours	\$55.00	\$45.00	Tour #1 Grand City Tour
		Sunday through Saturday	30	2 hours	\$44.00	\$39.00	Tour #1A Movie Stars' Homes Tour
LA Tours	N/A	Sunday through Saturday	N/A	4.5 hours	\$35.00	\$35.00	Grand Tour of Los Angeles
		Sunday through Saturday	N/A	3 hours	\$44.00	\$39.00	LA City Tour & Movie Stars' Homes
VIP Tours	N/A	Sunday through Saturday	14, 24-28, 48-58	4.5 hours	\$55.00	\$35.00	Los Angeles City Tour and Hollywood
		Sunday through Saturday	N/A	3/4 day	\$69.00	\$49.00	Movie Stars' Homes in Beverly Hills
Los Angeles Sightseeing Tours and Charters	N/A	Sunday through Saturday	N/A	5 hours	\$54.00	\$44.00	Los Angeles City Tour and Movie Stars' Homes
Beverly Hills Trolley Tours	N/A	Saturday and Sunday	N/A	40 minutes	\$10.00	\$5.00	Trolley Tour through Beverly Hills
Amazing LA Tours from Santa Monica	N/A	Sunday through Saturday	N/A	6 hours	\$85.00	\$75.00	Beverly Hills / Hollywood Premiere Tour & Movie Stars' Homes
		Sunday through Saturday	N/A	3 hours	\$95.00	\$85.00	Movie Stars' Homes in Beverly Hills
CalMcare	N/A	Sunday through Saturday	N/A	8 hours	\$79.00	\$64.00	Full Day Tour of Hollywood
Neon Cruises	N/A	Saturday	N/A	N/A	\$53.00	\$39.00	Neon Cruise
Gray Line Tours	N/A	Sunday through Saturday	N/A	4 hours	\$65.00	\$55.00	Beverly Hills / Hollywood City Tour & Movie Stars' Homes
		Sunday through Saturday	N/A	6 hours	\$85.00	\$75.00	Beverly Hills / Hollywood Premiere Tour & Movie Stars' Homes

Source: Company websites and Radio Records. Websites accessed on October 26, 2009, and November 15, 2009.

Note: Age range of "child" may not be the same across tour bus operators. For mass operators, hours shown represent a sampling of all hours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as Internet bookings or group deals.

Exhibit 11 (con't)

Selected Sightseeing Bus Tours in San Diego, California

Operator	Year Established	Days Operational	Passenger		Ticket Price		Types of Tours/Destinations
			Capacity per Bus	Tour Duration	Adult	Child	
Gray Line	1981	Sunday through Saturday	N/A	4 hours	\$30.00	\$17.00	City tour through San Diego
		Sunday through Saturday	N/A	Varies	\$39.00	\$31.00	Hollywood's Hop-On & Hop-Off Double-Decker Tour
Five Star Tours	1972	Sunday through Saturday	8-12, 30, 52	5 hours	\$33.00	\$19.00	San Diego City Photo Tour
		Sunday through Saturday	N/A	5 hours	\$25.00	\$15.00	Open Top Double Decker Bus City Tour
San Diego City Tour	N/A	Sunday through Saturday	N/A	4 hours	\$34.95	\$16.95	San Diego City Tour
		Sunday through Saturday	N/A	3 hours	\$40.95	\$18.95	San Diego City Tour with Seaport Village
		Tuesday, Friday, Saturday	N/A	10.5 hours	\$61.95	\$28.95	San Diego City Tour with Tijuana Mexico Tour
City Sightseeing San Diego	N/A	Sunday through Saturday	N/A	1 hour	\$25.00	\$15.00	San Diego City Tour

Source: Company websites and data therein. Websites accessed on October 26, 2009 and November 15, 2009

Note: Age range of "child" may not be the same across tour bus operators. For some operators, tours shown represent a sampling of all tours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as Internet bookings or group deals.

EXHIBIT 11 (CON'T)

Selected Sightseeing Bus Tours in New York City, New York

Operator	Year Established	Days Operational	Passenger Capacity per Bus	Tour Duration	Ticket Price		Types of Tours/Destinations
					Adult	Child	
Big Taxi Tours	1999	Sunday-Saturday (May-October) Thurs., Fri., Sat., Sun., Mon. (Mar-Apr, Nov-Dec) Call to reserve (Jan-Feb)	N/A	Varies	\$25.00	\$15.00	Hop on Hop off Bus Tour
				Varies	\$30.00	\$30.00	Hop on Hop off Bus and Boat Tour
CitySights	N/A	Sunday-Saturday	N/A	Varies	\$86.00	\$65.00	Hop on Hop off Bus Tour (Super New York Tour) (72 hours)
				Varies	\$34.00	\$44.00	Hop on Hop off Bus Tour (All Around Town)
				Varies	\$44.00	\$34.00	Hop on Hop off Bus Tour (Downtown Tour)
Gordon's Guide	N/A	N/A	N/A	N/A	\$445-\$699		Overnight City Tour
Gray Line	N/A	Sunday-Saturday (except Christmas and New Year's)	N/A	Varies	\$49.00	\$39.00	Hop on Hop off Tour (All Loops Tour) (48 hours)
				Varies	\$59.00	\$49.00	Hop on Hop off Tour (All Loops Tour) (72 hours)
				Varies	\$79.00	\$56.00	Hop on Hop off Tour (Wheel and Water Cruise)
				Varies	\$39.00	\$29.00	Hop on Hop off Tour (Downtown Loop)
OnBoard	N/A	Sunday-Saturday	15, 33, 35, 55	5.5 hours	\$69.99	\$54.99	Hop on Hop off Bus Tour
				3 hours	\$44.99	\$44.99	Hop on Hop off Bus Tour
My NYC Party	N/A	N/A	18, 24, 28, 35, 40, 50	N/A	N/A	N/A	Special events
Party Ride	1998	N/A	28-30, 35, 40, 46	N/A	N/A	N/A	Special events

Source: Company websites and links therein. Websites accessed on October 16, 2009.

Note: Age range of "child" may not be the same across tour bus operators. For some operators, tours shown represent a sampling of all tours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as internet bookings or group deals.

Selected Sightseeing Bus Tours in Miami-Fort Lauderdale-Key West, Florida

Operator	Year Established	Days Operational	Passenger Capacity per Bus	Tour Duration	Ticket Price		Types of Tours/Destinations
					Adult	Child	
Charter Buses Inc.	N/A	Sunday through Saturday	15, 29, 35, 50, 57	N/A	\$59.00	\$59.00	Fantasy Fest Key West
Gray Line	N/A	Sunday through Saturday	N/A	6 hours	\$55.00	\$45.00	Biscayne Bay Boat Tour, Miami City Tour
				4 hours	\$49.00	\$49.00	Vizcaya Museum & Gardens Tour
				4-5 hours	\$50.00	\$40.00	Everglades Airboat Adventure Tour
Miami Bus Charters	1999	Sunday through Saturday	14, 32, 57	3.5 hours	\$43.95	\$28.95	Historic Miami City Tour
				4-5 hours	\$55.95	\$40.95	Everglades Tour
Miami Jet Tours	1994	N/A	11, 14, 32, 56	N/A	\$45.00	\$35.00	Miami City Tour
					\$65.00	\$45.00	Everglades Tour
					\$35.00	\$30.00	Biscayne Bay Water Tour
					\$79.00	\$69.00	Key West One-Day Tour
					\$55.00	\$45.00	Night City Tour
Sawgrass Tours	N/A	Sunday through Saturday	41, 56	N/A	N/A	N/A	South Beach, Miami Seaquarium
Trolley Tours	~1984	Sunday through Saturday	N/A	Varies	\$29.00	\$14.00	Hop on Hop off Tour (Key West)
Twin Hearts Tours	N/A	Sunday through Saturday	40, 59	N/A	Competitive	Competitive	Port of Miami
					Competitive	Competitive	Port Everglades
Visitor	1999	Sunday through Saturday	N/A	6 hours	\$49.99	\$49.99	Miami City Tour

Source: Company websites and links therein. Websites accessed on October 16, 2009, and November 15, 2009.

Note: Age range of "child" may not be the same across tour bus operators. For some operators, tours shown represent a sampling of all tours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as internet bookings or group deals.

EXHIBIT 11 (CON'T)

Selected Sightseeing Bus Tours in Washington, DC

Operator	Year Established	Days Operational	Passenger Capacity per Bus	Tour Duration	Ticket Price		Types of Tours/Destinations
					Adult	Child	
BikeRide	1991	Sunday through Saturday	3 to 61	N/A	N/A	N/A	
CitySightseeing	1998	Sunday through Saturday (April 1-October 15)	N/A	0.75 hours	\$14.00	\$7.00	River Cruise Boat Trip
				1.5 hours	\$20.00	\$10.00	City Night Tour
		Sunday through Saturday (March 26-October 31)		1-1.5 hours	\$30.00	\$15.00	Hop on Hop off Tours (24 hours)
				1.75-2.25 hours	\$39.00	\$19.00	Bus and Boat Tour (24 hours)
GrayLine	N/A	Sunday through Saturday	N/A	Varies	\$35.00	\$18.00	Hop on Hop off Tour (48 hours)
Haymarket Transportation	N/A		10, 35, 57	N/A	N/A	N/A	National monuments and memorials
Open Top Sightseeing (partners with		Sunday through Saturday		Varies	\$35.00	\$18.00	Hop on Hop off Tour (48 hours)
OnBoard	N/A	Sunday through Saturday	N/A	6 hours	\$59.99	\$44.99	City Tour (DC It All)
				3 hours	\$39.99	\$39.99	City Night Tour (DC The Lights)
				2 hours	\$29.00	\$29.00	Hop on Hop off (Roundabout Tour)
Tourmobile Sightseeing	1969	Sunday through Saturday	N/A	Varies	\$27.00	\$13.00	Hop on Hop off (American Heritage Tour 24 hours)
Trolley Tours (aka Old Town Trolley	~1984	Sunday through Saturday	N/A	Varies	\$35.00	\$18.00	Hop on Hop off (48 hours)
			N/A	1.5 hours	\$32.00	\$16.00	Amphibious Tour (DC Ducks)
			N/A	2.5 hours	\$35.00	\$18.00	City Night Tour (Monuments by Moonlight Tour)
Vista		Sunday through Saturday	N/A	6 hours	\$49.99	\$49.99	National monuments and memorials
				Varies	\$33.29	\$33.29	Hop on Hop off Trolley Tour (24 hours)

Source: Company websites and trade shows. Websites accessed on October 16, 2009.

Note: Age range of "child" may not be the same across tour bus operators. For some operators, tours shown represent a sampling of all tours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as Internet bookings or group deals.

Selected Sightseeing Bus Tours in New Orleans, Louisiana

Operator	Year Established	Days Operational	Passenger Capacity per Bus	Tour Duration	Ticket Price		Types of Tours/Destinations
					Adult	Child	
Celebration Tours	N/A	Sunday through Saturday	12, 49	2.5-3 hours	\$49.00	\$49.00	City Tour
				5.5 hours	\$85.00	\$85.00	Plantation Tour
GrayLine	1924	Sunday through Saturday (Oct 1-Nov 25)	N/A	2 hours	\$29.00	\$13.00	City Tour (Super City Tour)
		Tues., Thurs., Sun. (Jun 1-Nov 25)		4.5 hours	\$49.00	\$21.00	Plantation Tour
		Sunday through Saturday (March 1-Nov 25)		3.75 hours	\$48.00	\$24.00	Swamp & Bayou Tour
		Sunday through Saturday (Nov 27-Dec 31)		3 hours	\$35.00	\$28.00	Hurricane Katrina Tour
New Orleans Tours	> 30 years experience		25, 47, 55	N/A	N/A	N/A	N/A
Tours by Isabelle	1979	Sunday through Saturday	13	3.5 hours	\$65.00	\$65.00	Post-Katrina Tour
				8.5 hours	\$125.00	\$125.00	Plantation Tour
				4 hours	\$95.00	\$95.00	Airboat Tour

Source: Company website and trade shows. Websites accessed on October 16, 2009.

Note: Age range of "child" may not be the same across tour bus operators. For some operators, tours shown represent a sampling of all tours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as Internet bookings or group deals.

EXHIBIT 11 (CON'T)

Selected Sightseeing Bus Tours in Paris, France

Operator	Year Established	Days Operational	Tour Duration	Ticket Price		Types of Tours/Destinations
				Adult	Child	
GrayLine	N/A	Sunday through Saturday	Varies	\$40.60	\$21.00	Hop on Hop off Tour (24 hours)
			Varies	\$60.20	\$26.60	Hop on Hop off Tour (72 hours)
L'Opentour	N/A	Sunday through Saturday	Varies	\$43.24	\$22.41	Hop on Hop off Tour (24 hours)
Open Top Sightseeing		Sunday through Saturday	Varies	\$34.00	\$17.00	Hop on Hop off Tour (48 hours)
Paris Vision	1980s ~1939	Sunday through Saturday	2 hours	\$35.79	\$35.79	City Tour (Paris Express)
			5 hours	\$61.14	\$61.14	City Tour (Paris Panoramic Tour)
			5 hours	\$140.17	\$140.17	City Tour (Paris Musts)
			10 hours	\$147.63	\$147.63	Palace of Versailles & Paris
Viator	1999	Sunday through Saturday	Varies	\$35.79	\$17.90	Hop on Hop off Tour (48 hours)

Source: Company websites and links therein; <http://www.oanda.com/convert/classic>. Websites accessed on October 20, 2009.

Note. Age range of "child" may not be the same across tour bus operators. For some operators, tours shown represent a sampling of all tours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as Internet bookings or group deals.

Selected Sightseeing Bus Tours in London, England

Operator	Year Established	Days Operational	Passenger Capacity per Bus (80 total buses)	Tour Duration	Ticket Price		Types of Tours/Destinations
					Adult	Child	
The Big Bus Company	1991	Sunday through Saturday	(80 total buses)	Varies	\$34.35	\$34.35	Hop on Hop off Tour (24 hours)
GrayLine (Golden Tours)	1984	Sunday through Saturday	N/A	2.5 hours	\$35.99	\$27.81	City Tour
				4.5 hours	\$76.88	\$68.70	City Tour, Cruise
London Tours	N/A	Sunday through Saturday	N/A	Varies	\$40.95	\$14.95	Hop on Hop off Tour (24 hours)
The Original London Sightseeing Tour	1951	Sunday through Saturday	N/A	Varies	\$35.99	\$16.36	Hop on Hop off Tour (24 hours)
Viator	N/A	Sunday through Saturday (April-October) Sun., Mon., Wed., Fri., Sat. (November-March)	50	8 hours	\$130.85	\$130.85	City/Landmark Tour

Source: Company websites and links therein; <http://www.oanda.com/convert/classic>. Websites accessed on October 19, 2009.

Note. Age range of "child" may not be the same across tour bus operators. For some operators, tours shown represent a sampling of all tours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as Internet bookings or group deals.

ATTACHMENT

December 2008

Curriculum Vitae

Name: Robert D. Willig

Address: 220 Ridgeview Road, Princeton, New Jersey 08540

Birth: 1/16/47; Brooklyn, New York

Marital Status: Married, four children

Education: Ph.D. Economics, Stanford University, 1973
Dissertation: Welfare Analysis of Policies
Affecting Prices and Products.
Advisor: James Rosse

M.S. Operations Research, Stanford University, 1968.

A.B. Mathematics, Harvard University, 1967.

Professional Positions:

Professor of Economics and Public Affairs, Princeton University, 1978-.

Principal External Advisor, Infrastructure Program, Inter-American Development Bank, 6/97-8/98.

Deputy Assistant Attorney General, U.S. Department of Justice, 1989-1991.

Supervisor, Economics Research Department, Bell Laboratories, 1977-1978.

Visiting Lecturer (with rank of Associate Professor), Department of Economics and Woodrow Wilson School, Princeton University, 1977-78 (part time).

Economics Research Department, Bell Laboratories, 1973-77.

Lecturer, Economics Department, Stanford University, 1971-73.

Other Professional Activities:

OECD Advisory Council for Mexican Economic Reform, 2008 - ,

Senior Consultant, Compass Lexecon, 2008 -

Director, Competition Policy Associates, Inc., 2003-2005

Advisory Board, Electronic Journal of Industrial Organization and Regulation Abstracts, 1996-.

Advisory Board, Journal of Network Industries, 2004-.

Visiting Faculty Member (occasional), International Program on Privatization and Regulatory Reform, Harvard Institute for International Development, 1996-2000.

Member, National Research Council Highway Cost Allocation Study Review Committee, 1995-98.

Member, Defense Science Board Task Force on the Antitrust Aspects of Defense Industry Consolidation, 1993-94.

Editorial Board, Utilities Policy, 1990-2001

Leif Johanson Lecturer, University of Oslo, November 1988.

Member, New Jersey Governor's Task Force on Market-Based Pricing of Electricity, 1987-89.

Co-editor, Handbook of Industrial Organization, 1984-89.

Associate Editor, Journal of Industrial Economics, 1984-89.

Director, Consultants in Industry Economics, Inc., 1983-89, 1991-94.

Fellow, Econometric Society, 1981-.

Organizing Committee, Carnegie-Mellon-N.S.F. Conference on Regulation, 1985.

Board of Editors, American Economic Review, 1980-83.

Nominating Committee, American Economic Association, 1980-1981.

Research Advisory Committee, American Enterprise Institute, 1980-1986.

Editorial Board, M.I.T. Press Series on Government Regulation of Economic Activity, 1979-93.

Program Committee, 1980 World Congress of the Econometric Society.

Program Committee, Econometric Society, 1979, 1981, 1985.

Organizer, American Economic Association Meetings: 1980, 1982.

American Bar Association Section 7 Clayton Act Committee, 1981.

Principal Investigator, NSF grant SOC79-0327, 1979-80; NSF grant 285-6041, 1980-82; NSF grant SES-8038866, 1983-84, 1985-86.

Aspen Task Force on the Future of the Postal Service, 1978-80.

Organizing Committee of Sixth Annual Telecommunications Policy Research Conference, 1977-78.

Visiting Fellow, University of Warwick, July 1977.

Institute for Mathematical Studies in the Social Sciences, Stanford University, 1975.

Published Articles and Book Chapters:

"The 1982 Department of Justice Merger Guidelines: An Economic Assessment," (with J. Ordovery) reprinted in Economics of Antitrust Law, Benjamin Klein (ed.), Edward Elgar, 2008.

"Antitrust and Patent Settlements: The Pharmaceutical Cases," (with John Bigelow) in The Antitrust Revolution (Fifth Edition), John Kwoka and Lawrence White (eds.), 2008.

"On the Antitrust Treatment of Production Joint Ventures," (with Carl Shapiro) reprinted in Economics of Antitrust Law, Benjamin Klein (ed.), Edward Elgar, 2008.

"Consumer's Surplus Without Apology," reprinted in Applied Welfare Economics, Richard Just, Darrel Hueth and Andrew Schmitz (eds.), Edward Elgar, 2008; reprinted in Readings in Social Welfare: Theory and Policy, Robert E. Kuenne (ed.), Blackwell, 2000, pp. 86-97; reprinted in Readings in Microeconomic Theory, M. M. La Manna (ed.), Dryden Press, 1997, pp. 201-212.

"The Risk of Contagion from Multi-Market Contact," (with Charles Thomas), The International Journal of Industrial Organization, Vol. 24, Issue 6 (Nov. 2006), pp 1157 – 1184.

"Pareto-Superior Nonlinear Outlay Schedules," reprinted in The Economics of Public Utilities, Ray Rees (ed.), Edward Elgar, 2006; reprinted in The Economics of Price Discrimination, G. Norman, (ed.), Edward Elgar, 1999.

"Economic Effects of Antidumping Policy," reprinted in The WTO and Anti-Dumping, Douglas Nelson (ed.), Edward Elgar, 2005.

"Merger Analysis, Industrial Organization Theory and the Merger Guidelines," reprinted in Antitrust and Competition Policy, Andrew Kleit (ed.) Edward Elgar, 2005

"Antitrust Policy Towards Agreements That Settle Patent Litigation," (with John Bigelow), Antitrust Bulletin, Fall 2004, pp. 655-698.

"Economies of Scope," (with John Panzar), reprinted in The Economics of Business Strategy, John Kay (ed.), Edward Elgar, 2003.

"Panel on Substantive Standards for Mergers and the Role of Efficiencies," in International Antitrust Law & Policy, Barry E. Hawk (ed.), Juris Publishing, 2003.

"Practical Rules for Pricing Access in Telecommunications," (with J. Ordover) in Second Generation Reforms in Infrastructure Services, F. Basanes and R. Willig (eds.), Johns Hopkins Press, 2002.

"Comments on Antitrust Policy in the Clinton Administration," in American Economic Policy in the 1990s, J. Frankel and P. Orszag (eds.), MIT Press, 2002.

"Entrepreneurship, Access Policy and Economic Development: Lessons from Industrial Organization," (with M. Dutz and J. Ordover), European Economic Review, (44)4-6 (2000), pp. 739-747.

"Public Versus Regulated Private Enterprise," reprinted in Privatization in Developing Countries, P. Cook and C. Kirkpatrick (eds.), Edward Elgar, 2000.

"Deregulation v. the Legal Culture: Panel Discussion," in Is the Telecommunications Act of 1996 Broken?, G. Sidak (ed.), AEI Press, 1999.

"Economic Principles to Guide Post-Privatization Governance," in Can Privatization Deliver? Infrastructure for Latin America, R. Willig co-editor, Johns Hopkins Press, 1999.

"Access and Bundling in High-Technology Markets," (with J. A. Ordover), in Competition, Innovation and the Microsoft Monopoly: Antitrust in the Digital Marketplace, J. A. Eisenach and T. Lenard (eds.), Kluwer, 1999.

"Competitive Rail Regulation Rules: Should Price Ceilings Constrain Final Products or Inputs?," (With W. J. Baumol), Journal of Transport Economics and Policy, Vol. 33, Part 1, pp. 1-11.

"Economic Effects of Antidumping Policy," Brookings Trade Forum: 1998, 19-41.

"Interview With Economist Robert D. Willig," Antitrust, Vol. 11, No. 2, Spring 1997, pp.11-15.

"Parity Pricing and its Critics: A Necessary Condition for Efficiency in Provision of Bottleneck Services to Competitors," (with W. J. Baumol and J. A. Ordover), Yale Journal on Regulation, Vol. 14, No. 1, Winter 1997, pp. 145-164.

"Restructuring Regulation of the Rail Industry," (with Ioannis Kessides), in Private Sector, Quarterly No. 4, September 1995, pp. 5 - 8. Reprinted in Viewpoint, October, 1995, The World Bank. Reprinted in Private Sector, special edition: Infrastructure, June 1996.

"Competition and Regulation in the Railroad Industry," (with Ioannis Kessides), in Regulatory Policies and Reform: A Comparative Perspective, C. Frischtak (ed.), World Bank, 1996.

"Economic Rationales for the Scope of Privatization," (with Carl Shapiro), reprinted in The Political Economy of Privatization and Deregulation, E. E. Bailey and J. R. Pack (eds.), The International Library of Critical Writings in Economics, Edward Elgar Publishing Co., 1995, pp. 95-130.

"Weak Invisible Hand Theorems on the Sustainability of Multi-product Natural Monopoly," (with W. Baumol and E. Bailey), reprinted in The Political Economy of Privatization and Deregulation, E. E. Bailey and J. R. Pack (eds.), The International Library of Critical Writings in Economics, Edward Elgar Publishing Co., 1995, pp. 245-260.

"Economists' View: The Department of Justice Draft Guidelines for the Licensing and Acquisition of Intellectual Property," (with J. Ordover), Antitrust, V. 9, No. 2 (spring 1995), 29-36.

"Public Versus Regulated Private Enterprise," in Proceedings of the World Bank Annual Conference on Development Economics 1993, L. Summers (ed.), The World Bank, 1994.

"Economics and the 1992 Merger Guidelines: A Brief Survey," (with J. Ordover), Review of Industrial Organization, V. 8, No. 2, (1993), pp. 139-150.

"The Role of Sunk Costs in the 1992 Guidelines' Entry Analysis," Antitrust, V. 6, No. 3 (summer 1992).

"Antitrust Lessons from the Airlines Industry: The DOJ Experience," Antitrust Law Journal, V. 60, No. 2 (1992).

"William J. Baumol," (with E. E. Bailey), in New Horizons in Economic Thought: Appraisals of Leading Economists, W. J. Samuels (ed.), Edward Elgar, 1992.

"Anti-Monopoly Policies and Institutions," in The Emergence of Market Economies in Eastern Europe, Christopher Clague and Gordon Rausser (eds.), Basil Blackwell, 1992.

"Economics and the 1992 Merger Guidelines," (with Janusz Ordover), in Collaborations Among Competitors: Antitrust Policy and Economics, Eleanor Fox and James Halverson (eds.), American Bar Association, 1992.

"On the Antitrust Treatment of Production Joint Ventures," (with Carl Shapiro), reprinted in Collaborations Among Competitors: Antitrust Policy and Economics, Eleanor Fox and James Halverson (eds.), American Bar Association, 1992.

"Merger Analysis, Industrial Organization Theory, and Merger Guidelines," Brookings Papers on Economic Activity – Microeconomics 1991, pp. 281-332.

"On the Antitrust Treatment of Production Joint Ventures," (with C. Shapiro), Journal of Economic Perspectives, Vol. 4, No. 3, Summer 1990, pp. 113-130.

"Economic Rationales for the Scope of Privatization," (with Carl Shapiro), in The Political Economy of Public Sector Reform and Privatization, E.N. Suleiman and J. Waterbury (eds.), Westview Press, Inc., 1990, pp. 55-87.

"Contestable Market Theory and Regulatory Reform," in Telecommunications Deregulation: Market Power and Cost Allocation, J.R. Allison and D.L. Thomas (eds.), Ballinger, 1990.

"Address To The Section," Antitrust Law Section Symposium, New York State Bar Association, 1990.

"Price Caps: A Rational Means to Protect Telecommunications Consumers and Competition," (with W. Baumol), Review of Business, Vol. 10, No. 4, Spring 1989, pp. 3-8.

"U.S.-Japanese VER: A Case Study from a Competition Policy Perspective," (with M. Dutz) in The Costs of Restricting Imports. The Automobile Industry. OECD, 1988.

"Contestable Markets," in The New Palgrave: A Dictionary of Economics, J. Eatwell, M. Milgate, and P. Newman (eds.), 1987.

"Do Entry Conditions Vary Across Markets: Comments," Brookings Papers on Economic Activity, 3 - 1987, pp. 872-877.

"Railroad Deregulation: Using Competition as a Guide," (with W. Baumol), Regulation, January/February 1987, Vol. 11, No. 1, pp. 28-36.

"How Arbitrary is 'Arbitrary'? - or, Toward the Deserved Demise of Full Cost Allocation," (with W. Baumol and M. Koehn), Public Utilities Fortnightly, September 1987, Vol. 120, No. 5, pp. 16-22.

"Contestability: Developments Since the Book," (with W. Baumol), Oxford Economic Papers, December 1986, pp. 9-36.

"The Changing Economic Environment in Telecommunications: Technological Change and Deregulation," in Proceedings from the Telecommunications Deregulation Forum, Karl Eller Center, 1986.

"Perspectives on Mergers and World Competition," (with J. Ordover), in Antitrust and Regulation, R.E. Grieson (ed.), Lexington, 1986.

"On the Theory of Perfectly Contestable Markets," (with J. Panzar and W. Baumol), in New Developments in The Analysis of Market Structure, J. Stiglitz and F. Mathewson (eds.), MIT Press, 1986.

"InterLATA Capacity Growth and Market Competition," (with C. Shapiro), in Telecommunications and Equity: Policy Research Issues, J. Miller (ed.), North Holland, 1986.

"Corporate Governance and Market Structure," in Economic Policy in Theory and Practice, A. Razin and E. Sadka (eds.), Macmillan Press, 1986.

"Antitrust for High-Technology Industries: Assessing Research Joint Ventures and Mergers," (with J. Ordover), Journal of Law and Economics, Vol 28(2), May 1985, pp. 311-334.

"Non-Price Anticompetitive Behavior by Dominant Firms Toward the Producers of Complementary Products," (with J. Ordover and A. Sykes), in Antitrust and Regulation, F.M. Fisher (ed.), MIT Press, 1985.

"Telephones and Computers: The Costs of Artificial Separation," (with W. Baumol), Regulation, March/April 1985.

"Transfer Principles in Income Redistribution," (with P. Fishburn), Journal of Public Economics, 25 (1984), pp. 1-6.

"Market Structure and Government Intervention in Access Markets," in Telecommunications Access and Public Policy, A. Baughcam and G. Faulhaber (eds.), 1984.

"Pricing Issues in the Deregulation of Railroad Rates," (with W. Baumol), in Economic Analysis of Regulated Markets: European and U. S. Perspectives, J. Finsinger (ed.), 1983.

"Local Telephone Pricing in a Competitive Environment," (with J. Ordover), in Telecommunications Regulation Today and Tomorrow, E. Noam (ed.), Harcourt Brace Jovanovich, 1983.

"Economics and Postal Pricing Policy," (with B. Owen), in The Future of the Postal Service, J. Fleishman (ed.), Praeger, 1983.

"Selected Aspects of the Welfare Economics of Postal Pricing," in Telecommunications Policy Annual, Praeger, 1987.

"The Case for Freeing AT&T" (with M. Katz), Regulation, July-Aug. 1983, pp. 43-52.

"Predatory Systems Rivalry: A Reply" (with J. Ordover and A. Sykes), Columbia Law Review, Vol. 83, June 1983, pp. 1150-1166. Reprinted in Corporate Counsel's Handbook - 1984.

"Sector Differentiated Capital Taxation with Imperfect Competition and Interindustry Flows," Journal of Public Economics, Vol. 21, 1983.

"Contestable Markets: An Uprising in the Theory of Industry Structure: Reply," (with W.J. Baumol and J.C. Panzar), American Economic Review, Vol. 73, No. 3, June 1983, pp. 491-496.

"The 1982 Department of Justice Merger Guidelines: An Economic Assessment," (with J. Ordover), California Law Review, Vol. 71, No. 2, March 1983, pp. 535-574. Reprinted in Antitrust Policy in Transition: The Convergence of Law and Economics, E.M. Fox and J.T. Halverson (eds.), 1984.

"Intertemporal Failures of the Invisible Hand: Theory and Implications for International Market Dominance," (with W.J. Baumol), Indian Economic Review, Vol. XVI, Nos. 1 and 2, January-June 1981, pp. 1-12.

"Unfair International Trade Practices," (with J. Ordover and A. Sykes), Journal of International Law and Politics, Vol. 15, No. 2, winter 1983, pp. 323-337.

"Journals as Shared Goods: Reply," (with J. Ordover), American Economic Review, V. 72, No. 3, June 1982, pp. 603-607.

"Herfindahl Concentration, Rivalry, and Mergers," (with J. Ordover and A. Sykes), Harvard Law Review, V. 95, No. 8, June 1982, pp. 1857-1875.

"An Economic Definition of Predation: Pricing and Product Innovation," (with J. Ordover), Yale Law Journal, Vol. 90: 473, December 1981, pp. 1-44.

"Fixed Costs, Sunk Costs, Entry Barriers, and the Sustainability of Monopoly," (with W. Baumol), Quarterly Journal of Economics, Vol. 96, No. 3, August 1981, pp. 405-432.

"Social Welfare Dominance," American Economic Review, Vol. 71, No. 2, May 1981, pp. 200-204.

"Economies of Scope," (with J. Panzar), American Economic Review, Vol. 72, No. 2, May 1981, pp. 268-272.

"Income-Distribution Concerns in Regulatory Policymaking," (with E.E. Bailey) in Studies in Public Regulation (G. Fromm, ed.), MIT Press, Cambridge, 1981, pp. 79-118.

"An Economic Definition of Predatory Product Innovation," (with J. Ordover), in Strategic Predation and Antitrust Analysis, S. Salop (ed.), 1981.

"What Can Markets Control?" in Perspectives on Postal Service Issues, R. Sherman (ed.), American Enterprise Institute, 1980.

"Pricing Decisions and the Regulatory Process," in Proceedings of the 1979 Rate Symposium on Problems of Regulated Industries, University of Missouri-Columbia Extension Publications, 1980, pp. 379-388.

"The Theory of Network Access Pricing," in Issues in Public Utility Regulation, H.M. Trebing (ed.), MSU Public Utilities Papers, 1979.

"Customer Equity and Local Measured Service," in Perspectives on Local Measured Service, J. Baude, et al. (ed.), 1979, pp. 71-80.

"The Role of Information in Designing Social Policy Towards Externalities," (with J. Ordover), Journal of Public Economics, V. 12, 1979, pp. 271-299.

"Economies of Scale and the Profitability of Marginal-Cost Pricing: Reply," (with J. Panzar), Quarterly Journal of Economics, Vol. 93, No. 4, November 1979, pp. 743-4.

"Theoretical Determinants of the Industrial Demand for Electricity by Time of Day," (with J. Panzar) Journal of Econometrics, V. 9, 1979, pp. 193-207.

"Industry Performance Gradient Indexes," (with R. Dansby), American Economic Review, V. 69, No. 3, June 1979, pp. 249-260.

"The Economic Gradient Method," (with E. Bailey), American Economic Review, Vol. 69, No. 2, May 1979, pp. 96-101.

"Multiproduct Technology and Market Structure," American Economic Review, Vol. 69, No. 2, May 1979, pp. 346-351.

"Consumer's Surplus Without Apology: Reply," American Economic Review, Vol. 69, No. 3, June 1979, pp. 469-474.

"Decisions with Estimation Uncertainty," (with R. Klein, D. Sibley, and L. Rafsky), Econometrica, V. 46, No. 6, November 1978, pp. 1363-1388.

"Incremental Consumer's Surplus and Hedonic Price Adjustment," Journal of Economic Theory, V. 17, No. 2, April 1978, pp. 227-253.

"Recent Theoretical Developments in Financial Theory: Discussion," The Journal of Finance, V. 33, No. 3, June 1978, pp. 792-794.

"The Optimal Provision of Journals Qua Sometimes Shared Goods," (with J. Ordover), American Economic Review, V. 68, No. 3, June 1978, pp. 324-338.

"On the Comparative Statics of a Competitive Industry With Infra-marginal Firms," (with J. Panzar), American Economic Review, V. 68, No. 3, June 1978, pp. 474-478.

"Pareto Superior Nonlinear Outlay Schedules," Bell Journal of Economics, Vol. 9, No. 1, Spring 1978, pp. 56-69.

"Predatoriness and Discriminatory Pricing," in The Economics of Anti-Trust: Course of Study Materials, American Law Institute-American Bar Association, 1978.

"Economies of Scale in Multi-Output Production," (with J. Panzar), Quarterly Journal of Economics, V. 91, No. 3, August 1977, pp. 481-494.

"Weak Invisible Hand Theorems on the Sustainability of Multi-product Natural Monopoly," (with W. Baumol and E. Bailey), American Economic Review, V. 67, No. 3, June 1977, pp. 350-365.

"Free Entry and the Sustainability of Natural Monopoly," (with J. Panzar), Bell Journal of Economics, Spring 1977, pp. 1-22.

"Risk Invariance and Ordinally Additive Utility Functions," Econometrica, V. 45, No. 3, April 1977, pp. 621-640.

"Ramsey-Optimal Pricing of Long Distance Telephone Services," (with E. Bailey), in Pricing in Regulated Industries. Theory and Application, J. Wenders (ed.), Mountain State Telephone and Telegraph Co., 1977, pp. 68-97.

"Network Externalities and Optimal Telecommunications Pricing: A Preliminary Sketch," (with R. Klein), in Proceedings of Fifth Annual Telecommunications Policy Research Conference, Volume II, NTIS, 1977, pp. 475-505.

"Otsenka ekonomicheskoi effektivnosti proizvodstvennoi informatsii" ["The Evaluation of the Economic Benefits of Productive Information"] in Doklady Sovetskikh i Amerikanskikh Spetsialistov Predstavlenye na Pervyi Sovetsko-Amerikanskii Simpozium po Ekonomicheskoi Effektivnosti Informatsionnogo Obsluzhivaniia [Papers of Soviet and American Specialists Presented at the First Soviet- American Symposium on Costs and Benefits of Information Services], All Soviet Scientific Technical Information Center, Moscow, 1976.

"Vindication of a 'Common Mistake' in Welfare Economics," (with J. Panzar), Journal of Political Economy, V. 84, No. 6, December 1976, pp. 1361-1364.

"Consumer's Surplus Without Apology," American Economic Review, V. 66, No. 4, September 1976, pp. 589-597.

Books

Second Generation Reforms in Infrastructure Services, F. Basanes and R. Willig (eds.), Johns Hopkins Press, 2002.

Can Privatization Deliver? Infrastructure for Latin America, R. Willig co-editor, Johns Hopkins Press, 1999.

Handbook of Industrial Organization, (edited with R. Schmalensee), North Holland Press, Volumes 1 and 2, 1989.

Contestable Markets and the Theory of Industry Structure, (with W.J. Baumol and J.C. Panzar), Harcourt Brace Jovanovich, 1982. Second Edition, 1989.

Welfare Analysis of Policies Affecting Prices and Products, Garland Press, 1980.

Unpublished Papers and Reports:

"An Econometric Analysis of the Matching Between Football Student-Athletes and Colleges," (with Yair Eilat, Bryan Keating and Jon Orszag), 8/31/08, submitted for publication.

Supreme Court Amicus Brief Regarding Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County, Washington, (co-authored), AEI-Brookings Joint Center Brief No. 07-02, 12/2/07

"(Allegedly) Monopolizing Tying Via Product Innovation," statement before the Department of Justice/Federal Trade Commission Section 2 Hearings, November 1, 2006.

"Assessment of U.S. Merger Enforcement Policy," statement before the Antitrust Modernization Commission, 11/17/05.

"Investment is Appropriately Stimulated by TELRIC," in Pricing Based on Economic Cost, 12/2003.

"Brief of Amici Curiae Economics Professors, re Verizon v. Trinko, In the Supreme Court of the U.S.," (with W.J. Baumol, J.O. Ordover and F.R. Warren-Boulton), 7/25/2003.

"Stimulating Investment and the Telecommunications Act of 1996," (with J. Bigelow, W. Lehr and S. Levinson), 2002.

"An Economic Analysis of Spectrum Allocation and Advanced Wireless Services," (with Martin N. Baily, Peter R. Orszag, and Jonathan M. Orszag), 2002

"Effective Deregulation of Residential Electric Service," 2001

"Anticompetitive Forced Rail Access," (with W. J. Baumol), 2000

"The Scope of Competition in Telecommunications" (with B. Douglas Bernheim), 1998

"Why Do Christie and Schultz Infer Collusion From Their Data? (with Alan Kleidon), 1995.

"Demonopolization," (with Sally Van Siclen), OECD Vienna Seminar Paper, 1993.

"Economic Analysis of Section 337: The Balance Between Intellectual Property Protection and Protectionism," (with J. Ordover) 1990.

"The Effects of Capped NTS Charges on Long Distance Competition," (with M. Katz).

"Discussion of Regulatory Mechanism Design in the Presence of Research Innovation, and Spillover Effects," 1987.

"Industry Economic Analysis in the Legal Arena," 1987.

"Deregulation of Long Distance Telephone Services: A Public Interest Assessment," (with M. Katz).

"Competition-Related Trade Issues," report prepared for OECD.

"Herfindahl Concentration Index," (with J. Ordover), Memorandum for ABA Section 7 Clayton Act Committee, Project on Revising the Merger Guidelines, March 1981.

"Market Power and Market Definition," (with J. Ordover), Memorandum for ABA Section 7 Clayton Act Committee, Project on Revising the Merger Guidelines, May 1981.

"The Continuing Need for and National Benefits Derived from the REA Telephone Loan Programs - An Economic Assessment," 1981.

"The Economics of Equipment Leasing: Costing and Pricing," 1980.

"Rail Deregulation and the Financial Problems of the U.S. Railroad Industry," (with W.J. Baumol), report prepared under contract to Conrail, 1979.

"Price Indexes and Intertemporal Welfare," Bell Laboratories Economics Discussion Paper, 1974.

"Consumer's Surplus: A Rigorous Cookbook," Technical Report #98, Economics Series, I.M.S.S.S., Stanford University, 1973.

"An Economic-Demographic Model of the Housing Sector," (with B. Hickman and M. Hinz), Center for Research in Economic Growth, Stanford University, 1973.

Invited Conference Presentations:

- | | |
|---|------|
| Northwestern Law Research Symposium: Antitrust Economics and Competition Policy
"Discussion of Antitrust Evaluation of Horizontal Mergers" | 2008 |
| Inside Counsel Super-Conference
"Navigating Mixed Signals under Section 2 of the Sherman Act" | 2008 |
| Federal Trade Commission Workshop on Unilateral Effects in Mergers
"Best Evidence and Market Definition" | 2008 |
| European Policy Forum, Rules for Growth: Telecommunications Regulatory Reform
"What Kind of Regulation For Business Services?" | 2007 |
| Japanese Competition Policy Research Center, Symposium on M&A and Competition Policy
"Merger Policy Going Forward With Economics and the Economy" | 2007 |
| Federal Trade Commission and Department of Justice Section 2 Hearings
"Section 2 Policy and Economic Analytic Methodologies" | 2007 |
| Pennsylvania Bar Institute, Antitrust Law Committee CLE
"The Economics of Resale Price Maintenance and Class Certification" | 2007 |
| Pennsylvania Bar Institute, Antitrust Law Committee CLE
"Antitrust Class Certification – An Economist's Perspective" | 2007 |
| Fordham Competition Law Institute, International Competition Economics Training Seminar
"Monopolization and Abuse of Dominance" | 2007 |
| Canadian Bar Association Annual Fall Conference on Competition Law
"Economic Tools for the Competition Lawyer" | 2007 |
| Conference on Managing Litigation and Business Risk in Multi-jurisdiction Antitrust Matters
"Economic Analysis in Multi-jurisdictional Merger Control" | 2007 |

World Bank Conference on Structuring Regulatory Frameworks for Dynamic and Competitive South Eastern European Markets	
"The Roles of Government Regulation in a Dynamic Economy"	2006
Department of Justice/Federal Trade Commission Section 2 Hearings	
"(Allegedly) Monopolizing Tying Via Product Innovation"	2006
Fordham Competition Law Institute, Competition Law Seminar	
"Monopolization and Abuse of Dominance"	2006
Practicing Law Institute on Intellectual Property Antitrust	
"Relevant Markets for Intellectual Property Antitrust"	2006
PLI Annual Antitrust Law Institute	
"Cutting Edge Issues in Economics"	2006
World Bank's Knowledge Economy Forum V	
"Innovation, Growth and Competition"	2006
Charles University Seminar Series	
"The Dangers of Over-Ambitious Antitrust Regulation"	2006
NY State Bar Association Antitrust Law Section Annual Meeting	
"Efficient Integration or Illegal Monopolization?"	2006
World Bank Seminar	
"The Dangers of Over-Ambitious Regulation"	2005
ABA Section of Antitrust Law 2005 Fall Forum	
"Is There a Gap Between the Guidelines and Agency Practice?"	
2005	
Hearing of Antitrust Modernization Commission	
"Assessment of U.S. Merger Enforcement Policy"	2005
LEAR Conference on Advances in the Economics of Competition Law	
"Exclusionary Pricing Practices"	2005
Annual Antitrust Law Institute	
"Cutting Edge Issues in Economics"	2005
PRIOR Symposium on States and Stem Cells	
"Assessing the Economics of State Stem Cell Programs"	2005
ABA Section of Antitrust Law – AALS Scholars Showcase	

"Distinguishing Anticompetitive Conduct"	2005
Allied Social Science Associations National Convention "Antitrust in the New Economy"	2005
ABA Section of Antitrust Law 2004 Fall Forum "Advances in Economic Analysis of Antitrust"	2004
Phoenix Center State Regulator Retreat "Regulatory Policy for the Telecommunications Revolution"	2004
OECD Competition Committee "Use of Economic Evidence in Merger Control"	2004
Justice Department/Federal Trade Commission Joint Workshop "Merger Enforcement"	2004
Phoenix Center Annual U.S. Telecoms Symposium "Incumbent Market Power"	2003
Center for Economic Policy Studies Symposium on Troubled Industries "What Role for Government in Telecommunications?"	2003
Princeton Workshop on Price Risk and the Future of the Electric Markets "The Structure of the Electricity Markets"	2003
2003 Antitrust Conference "International Competition Policy and Trade Policy"	2003
International Industrial Organization Conference "Intellectual Property System Reform"	2003
ABA Section of Antitrust Law 2002 Fall Forum "Competition, Regulation and Pharmaceuticals"	2002
Fordham Conference on International Antitrust Law and Policy "Substantive Standards for Mergers and the Role of Efficiencies"	2002
Department of Justice Telecom Workshop "Stimulating Investment and the Telecommunications Act of 1996"	2002
Department of Commerce Conference on the State of the Telecom Sector "Stimulating Investment and the Telecommunications Act of 1996"	2002
Law and Public Affairs Conference on the Future of Internet Regulation	

“Open Access and Competition Policy Principles”	2002
Center for Economic Policy Studies Symposium on Energy Policy	
“The Future of Power Supply”	2002
The Conference Board: Antitrust Issues in Today’s Economy	
“The 1982 Merger Guidelines at 20”	2002
Federal Energy Regulatory Commission Workshop	
“Effective Deregulation of Residential Electric Service”	2001
IPEA International Seminar on Regulation and Competition	
“Electricity Markets: Deregulation of Residential Service”	2001
“Lessons for Brazil from Abroad”	2001
ABA Antitrust Law Section Task Force Conference	
“Time, Change, and Materiality for Monopolization Analyses”	2001
Harvard University Conference on American Economic Policy in the 1990s	
“Comments on Antitrust Policy in the Clinton Administration”	2001
Tel-Aviv Workshop on Industrial Organization and Anti-Trust	
“The Risk of Contagion from Multimarket Contact”	2001
2001 Antitrust Conference	
“Collusion Cases: Cutting Edge or Over the Edge?”	2001
“Dys-regulation of California Electricity”	2001
FTC Public Workshop on Competition Policy for E-Commerce	
“Necessary Conditions for Cooperation to be Problematic”	2001
HIID International Workshop on Infrastructure Policy	
“Infrastructure Privatization and Regulation”	2000
Villa Mondragone International Economic Seminar	
“Competition Policy for Network and Internet Markets”	2000
New Developments in Railroad Economics: Infrastructure Investment and Access Policies	
“Railroad Access, Regulation, and Market Structure”	2000
The Multilateral Trading System at the Millennium	
“Efficiency Gains From Further Liberalization”	2000
Singapore – World Bank Symposium on Competition Law and Policy	
“Policy Towards Cartels and Collusion”	2000

CEPS: Is It a New World?: Economic Surprises of the Last Decade "The Internet and E-Commerce"	2000
Cutting Edge Antitrust: Issues and Enforcement Policies "The Direction of Antitrust Entering the New Millennium"	2000
The Conference Board: Antitrust Issues in Today's Economy "Antitrust Analysis of Industries With Network Effects"	1999
CEPS: New Directions in Antitrust "Antitrust in a High-Tech World"	1999
World Bank Meeting on Competition and Regulatory Policies for Development "Economic Principles to Guide Post-Privatization Governance"	1999
1999 Antitrust Conference "Antitrust and the Pace of Technological Development" "Restructuring the Electric Utility Industry"	1999 1999
HIID International Workshop on Privatization, Regulatory Reform and Corporate Governance "Privatization and Post-Privatization Regulation of Natural Monopolies"	1999
The Federalist Society: Telecommunications Deregulation: Promises Made, Potential Lost? "Grading the Regulators"	1999
Inter-American Development Bank: Second Generation Issues In the Reform Of Public Services "Post-Privatization Governance" "Issues Surrounding Access Arrangements"	1999 1999
Economic Development Institute of the World Bank -- Program on Competition Policy "Policy Towards Horizontal Mergers"	1998
Twenty-fifth Anniversary Seminar for the Economic Analysis Group of the Department of Justice "Market Definition in Antitrust Analysis"	1998
HIID International Workshop on Privatization, Regulatory Reform and Corporate Governance "Infrastructure Architecture and Regulation: Railroads"	1998
EU Committee Competition Conference -- Market Power "US/EC Perspective on Market Definition"	1998

Federal Trade Commission Roundtable "Antitrust Policy for Joint Ventures"	1998
1998 Antitrust Conference "Communications Mergers"	1998
The Progress and Freedom Foundation Conference on Competition, Convergence, and the Microsoft Monopoly Access and Bundling in High-Technology Markets	1998
FTC Program on The Effective Integration of Economic Analysis into Antitrust Litigation The Role of Economic Evidence and Testimony	1997
FTC Hearings on Classical Market Power in Joint Ventures Microeconomic Analysis and Guideline	1997
World Bank Economists --Week IV Keynote Making Markets More Effective With Competition Policy	1997
Brookings Trade Policy Forum Competition Policy and Antidumping: The Economic Effects	1997
University of Malaya and Harvard University Conference on The Impact of Globalisation and Privatisation on Malaysia and Asia in the Year 2020 Microeconomics, Privatization, and Vertical Integration	1997
ABA Section of Antitrust Law Conference on The Telecommunications Industry Current Economic Issues in Telecommunications	1997
Antitrust 1998: The Annual Briefing The Re-Emergence of Distribution Issues	1997
Inter-American Development Bank Conference on Private Investment, Infrastructure Reform and Governance in Latin America & the Caribbean Economic Principles to Guide Post-Privatization Governance	1997
Harvard Forum on Regulatory Reform and Privatization of Telecommunications in the Middle East Privatization: Methods and Pricing Issues	1997
American Enterprise Institute for Public Policy Research Conference Discussion of Local Competition and Legal Culture	1997
Harvard Program on Global Reform and Privatization of Public Enterprises	

"Infrastructure Privatization and Regulation: Freight"	1997
World Bank Competition Policy Workshop	
"Competition Policy for Entrepreneurship and Growth"	1997
Eastern Economics Association Paul Samuelson Lecture	
"Bottleneck Access in Regulation and Competition Policy"	1997
ABA Annual Meeting, Section of Antitrust Law	
"Antitrust in the 21st Century: The Efficiencies Guidelines"	1997
Peruvian Ministry of Energy and Mines Conference on Regulation of Public Utilities	
"Regulation: Theoretical Context and Advantages vs. Disadvantages"	1997
The FCC: New Priorities and Future Directions	
"Competition in the Telecommunications Industry"	1997
American Enterprise Institute Studies in Telecommunications Deregulation	
"The Scope of Competition in Telecommunications"	1996
George Mason Law Review Symposium on Antitrust in the Information Revolution	
"Introduction to the Economic Theory of Antitrust and Information"	1996
Korean Telecommunications Public Lecture	
"Market Opening and Fair Competition"	1996
Korea Telecommunications Forum	
"Desirable Interconnection Policy in a Competitive Market"	1996
European Association for Research in Industrial Economics Annual Conference	
"Bottleneck Access: Regulation and Competition Policy"	1996
Harvard Program on Global Reform and Privatization of Public Enterprises	
"Railroad and Other Infrastructure Privatization"	1996
FCC Forum on Antitrust and Economic Issues Involved with InterLATA Entry	
"The Scope of Telecommunications Competition"	1996
Citizens for a Sound Economy Policy Watch on Telecommunications Interconnection	
"The Economics of Interconnection"	1996
World Bank Seminar on Experiences with Corporatization	
"Strategic Directions of Privatization"	1996

FCC Economic Forum on the Economics of Interconnection Lessons from Other Industries	1996
ABA Annual Meeting, Section of Antitrust Law The Integration, Disintegration, and Reintegration of the Entertainment Industry	1996
Conference Board: 1996 Antitrust Conference How Economics Influences Antitrust and Vice Versa	1996
Antitrust 1996: A Special Briefing Joint Ventures and Strategic Alliances	1996
New York State Bar Association Section of Antitrust Law Winter Meeting Commentary on Horizontal Effects Issues	1996
FTC Hearings on the Changing Nature of Competition in a Global and Innovation-Driven Age Vertical Issues for Networks and Standards	1995
Wharton Seminar on Applied Microeconomics Access Policies with Imperfect Regulation	1995
Antitrust 1996, Washington D.C. Assessing Joint Ventures for Diminution of Competition	1995
ABA Annual Meeting, Section of Antitrust Law Refusals to Deal -- Economic Tests for Competitive Harm	1995
FTC Seminar on Antitrust Enforcement Analysis Diagnosing Collusion Possibilities	1995
Philadelphia Bar Education Center: Antitrust Fundamentals Antitrust--The Underlying Economics	1995
Vanderbilt University Conference on Financial Markets Why Do Christie and Schultz Infer Collusion From Their Data?	1995
ABA Section of Antitrust Law Chair's Showcase Program Discussion of Telecommunications Competition Policy	1995
Conference Board: 1995 Antitrust Conference	

Analysis of Mergers and Joint Ventures	
1995	
ABA Conference on The New Antitrust: Policy of the '90s Antitrust on the Super Highways/Super Airways	1994
ITC Hearings on The Economic Effects of Outstanding Title VII Orders "The Economic Impacts of Antidumping Policies"	1994
OECD Working Conference on Trade and Competition Policy "Empirical Evidence on The Nature of Anti-dumping Actions"	1994
Antitrust 1995, Washington D.C. "Rigorous Antitrust Standards for Distribution Arrangements"	1994
ABA -- Georgetown Law Center: Post Chicago-Economics: New Theories - New Cases? "Economic Foundations for Vertical Merger Guidelines"	1994
Conference Board: Antitrust Issues in Today's Economy "New Democrats, Old Agencies: Competition Law and Policy"	1994
Federal Reserve Board Distinguished Economist Series "Regulated Private Enterprise Versus Public Enterprise"	1994
Institut d'Etudes Politiques de Paris "Lectures on Competition Policy and Privatization"	1993
Canadian Bureau of Competition Policy Academic Seminar Series, Toronto. "Public Versus Regulated Private Enterprise"	1993
CEPS Symposium on The Clinton Administration: A Preliminary Report Card "Policy Towards Business"	1993
Columbia Institute for Tele-Information Conference on Competition in Network Industries, New York, NY "Discussion of Deregulation of Networks: What Has Worked and What Hasn't"	1993
World Bank Annual Conference on Development Economics "Public Versus Regulated Private Enterprise"	1993
Center for Public Utilities Conference on Current Issues Challenging the Regulatory Process "The Economics of Current Issues in Telecommunications Regulation" "The Role of Markets in Presently Regulated Industries"	1992 1992

The Conference Board's Conference on Antitrust Issues in Today's Economy, New York, NY	
"Antitrust in the Global Economy"	1992
"Monopoly Issues for the '90s"	1993
Columbia University Seminar on Applied Economic Theory, New York, NY	
"Economic Rationales for the Scope of Privatization"	1992
Howrey & Simon Conference on Antitrust Developments, Washington, DC	
"Competitive Effects of Concern in the Merger Guidelines"	1992
Arnold & Porter Colloquium on Merger Enforcement, Washington, DC	
"The Economic Foundations of the Merger Guidelines"	1992
American Bar Association, Section on Antitrust Law Leadership Council Conference, Monterey, CA	
"Applying the 1992 Merger Guidelines"	1992
OECD Competition Policy Meeting, Paris, France	
"The Economic Impacts of Antidumping Policy"	1992
Center for Public Choice Lecture Series, George Mason University Arlington, VA	
"The Economic Impacts of Antidumping Policy"	1992
Brookings Institution Microeconomics Panel, Washington, DC,	
"Discussion of the Evolution of Industry Structure"	1992
AT&T Conference on Antitrust Essentials	
"Antitrust Standards for Mergers and Joint Ventures"	1991
ABA Institute on The Cutting Edge of Antitrust: Market Power	
"Assessing and Proving Market Power: Barriers to Entry"	1991
Second Annual Workshop of the Competition Law and Policy Institute of New Zealand	
"Merger Analysis, Industrial Organization Theory, and Merger Guidelines"	1991
"Exclusive Dealing and the <u>Fisher & Paykel</u> Case"	1991
Special Seminar of the New Zealand Treasury	
"Strategic Behavior, Antitrust, and The Regulation of Natural Monopoly"	1991
Public Seminar of the Australian Trade Practices Commission	
"Antitrust Issues of the 1990's"	1991
National Association of Attorneys General Antitrust Seminar	
"Antitrust Economics"	1991

District of Columbia Bar's 1991 Annual Convention "Administrative and Judicial Trends in Federal Antitrust Enforcement"	1991
ABA Spring Meeting "Antitrust Lessons From the Airline Industry"	1991
Conference on The Transition to a Market Economy - Institutional Aspects "Anti-Monopoly Policies and Institutions"	1991
Conference Board's Thirtieth Antitrust Conference "Antitrust Issues in Today's Economy"	1991
American Association for the Advancement of Science Annual Meeting "Methodologies for Economic Analysis of Mergers"	1991
General Seminar, Johns Hopkins University "Economic Rationales for the Scope of Privatization"	1991
Capitol Economics Speakers Series "Economics of Merger Guidelines"	1991
CRA Conference on Antitrust Issues in Regulated Industries "Enforcement Priorities and Economic Principles"	1990
Pepper Hamilton & Scheetz Anniversary Colloquium "New Developments in Antitrust Economics"	1990
PLI Program on Federal Antitrust Enforcement in the 90's "The Antitrust Agenda of the 90's"	1990
FTC Distinguished Speakers Seminar "The Evolving Merger Guidelines"	1990
The World Bank Speakers Series "The Role of Antitrust Policy in an Open Economy"	1990
Seminar of the Secretary of Commerce and Industrial Development of Mexico "Transitions to a Market Economy"	1990
Southern Economics Association "Entry in Antitrust Analysis of Mergers"	1990
"Discussion of Strategic Investment and Timing of Entry"	1990
American Enterprise Institute Conference on Policy Approaches to the Deregulation of Network Industries	

"Discussion of Network Problems and Solutions"	1990
American Enterprise Institute Conference on Innovation, Intellectual Property, and World Competition	
"Law and Economics Framework for Analysis"	1990
Banco Nacional de Desenvolvimento Economico Social Lecture	
"Competition Policy: Harnessing Private Interests for the Public Interest"	1990
Western Economics Association Annual Meetings	
"New Directions in Antitrust from a New Administration"	1990
"New Directions in Merger Enforcement: The View from Washington"	1990
Woodrow Wilson School Alumni Colloquium	
"Microeconomic Policy Analysis and Antitrust--Washington 1990"	1990
Arnold & Porter Lecture Series	
"Advocating Competition"	1991
"Antitrust Enforcement"	1990
ABA Antitrust Section Convention	
"Recent Developments in Market Definition and Merger Analysis"	1990
Federal Bar Association	
"Joint Production Legislation: Competitive Necessity or Cartel Shield?"	1990
Pew Charitable Trusts Conference	
"Economics and National Security"	1990
ABA Antitrust Section Midwinter Council Meeting	
"Fine-tuning the Merger Guidelines"	1990
"The State of the Antitrust Division"	1991
International Telecommunications Society Conference	
"Discussion of the Impact of Telecommunications in the UK"	1989
The Economists of New Jersey Conference	
"Recent Perspectives on Regulation"	1989
Conference on Current Issues Challenging the Regulatory Process	
"Innovative Pricing and Regulatory Reform"	1989
"Competitive Wheeling"	1989
Conference Board: Antitrust Issues in Today's Economy	
"Foreign Trade Issues and Antitrust"	1989

McKinsey & Co. Mini-MBA Conference	
"Economic Analysis of Pricing, Costing, and Strategic Business Behavior"	1989
	1994
Olin Conference on Regulatory Mechanism Design	
"Revolutions in Regulatory Theory and Practice: Exploring The Gap"	1989
University of Dundee Conference on Industrial Organization and Strategic Behavior	
"Mergers in Differentiated Product Industries"	1988
Leif Johanson Lectures at the University of Oslo	
"Normative Issues in Industrial Organization"	1988
Mergers and Competitiveness: Spain Facing the EEC	
"Merger Policy"	1988
"R&D Joint Ventures"	1988
New Dimensions in Pricing Electricity	
"Competitive Pricing and Regulatory Reform"	1988
Program for Integrating Economics and National Security: Second Annual Colloquium	
"Arming Decisions Under Asymmetric Information"	1988
European Association for Research in Industrial Economics	
"U.S. Railroad Deregulation and the Public Interest"	1987
"Economic Rationales for the Scope of Privatization"	1989
"Discussion of Licensing of Innovations"	1990
Annenberg Conference on Rate of Return Regulation in the Presence of Rapid Technical Change	
"Discussion of Regulatory Mechanism Design in the Presence of Research, Innovation, and Spillover Effects"	1987
Special Brookings Papers Meeting	
"Discussion of Empirical Approaches to Strategic Behavior"	1987
"New Merger Guidelines"	1990
Deregulation or Regulation for Telecommunications in the 1990's	
"How Effective are State and Federal Regulations?"	1987
Conference Board Roundtable on Antitrust	
"Research and Production Joint Ventures"	1990
"Intellectual Property and Antitrust"	1987
Current Issues in Telephone Regulation	

"Economic Approaches to Market Dominance: Applicability of Contestable Markets"	1987
Harvard Business School Forum on Telecommunications "Regulation of Information Services"	1987
The Fowler Challenge: Deregulation and Competition in The Local Telecommunications Market "Why Reinvent the Wheel?"	1986
World Bank Seminar on Frontiers of Economics "What Every Economist Should Know About Contestable Markets"	1986
Bell Communications Research Conference on Regulation and Information "Fuzzy Regulatory Rules"	1986
Karl Eller Center Forum on Telecommunications "The Changing Economic Environment in Telecommunications: Technological Change and Deregulation"	1986
Railroad Accounting Principles Board Colloquium "Contestable Market Theory and ICC Regulation"	1986
Canadian Embassy Conference on Current Issues in Canadian -- U.S. Trade and Investment "Regulatory Revolution in the Infrastructure Industries"	1985
Eagleton Institute Conference on Telecommunications in Transition "Industry in Transition: Economic and Public Policy Overview"	1985
Brown University Citicorp Lecture "Logic of Regulation and Deregulation"	1985
Columbia University Communications Research Forum "Long Distance Competition Policy"	1985
American Enterprise Institute Public Policy Week "The Political Economy of Regulatory Reform"	1984
MIT Communications Forum "Deregulation of AT&T Communications"	1984
Bureau of Census Longitudinal Establishment Data File and Diversification Study Conference "Potential Uses of The File"	1984
Federal Bar Association Symposium on Joint Ventures "The Economics of Joint Venture Assessment"	1984

Hoover Institute Conference on Antitrust "Antitrust for High-Technology Industries"	1984
NSF Workshop on Predation and Industrial Targeting "Current Economic Analysis of Predatory Practices"	1983
The Institute for Study of Regulation Symposium: Pricing Electric, Gas, and Telecommunications Services Today and for the Future "Contestability As A Guide for Regulation and Deregulation"	1984
University of Pennsylvania Economics Day Symposium "Contestability and Competition: Guides for Regulation and Deregulation"	1984
Pinhas Sapir Conference on Economic Policy in Theory and Practice "Corporate Governance and Market Structure"	1984
Centre of Planning and Economic Research of Greece "Issues About Industrial Deregulation"	1984
"Contestability: New Research Agenda"	1984
Hebrew and Tel Aviv Universities Conference on Public Economics "Social Welfare Dominance Extended and Applied to Excise Taxation"	1983
NBER Conference on Industrial Organization and International Trade "Perspectives on Horizontal Mergers in World Markets"	1983
Workshop on Local Access: Strategies for Public Policy "Market Structure and Government Intervention in Access Markets"	1982
NBER Conference on Strategic Behavior and International Trade "Industrial Strategy with Committed Firms: Discussion"	1982
Columbia University Graduate School of Business, Conference on Regulation and New Telecommunication Networks "Local Pricing in a Competitive Environment"	1982
International Economic Association Roundtable Conference on New Developments in the Theory of Market Structure "Theory of Contestability"	1982
"Product Dev., Investment, and the Evolution of Market Structures"	1982
N.Y.U. Conference on Competition and World Markets: Law and Economics "Competition and Trade Policy--International Predation"	1982

CNRS-ISPE-NBER Conference on the Taxation of Capital "Welfare Effects of Investment Under Imperfect Competition"	1982
Internationales Institut für Management und Verwaltung Regulation Conference "Welfare, Regulatory Boundaries, and the Sustainability of Oligopolies"	1981
NBER-Kellogg Graduate School of Management Conference on the Econometrics of Market Models with Imperfect Competition "Discussion of Measurement of Monopoly Behavior: An Application to the Cigarette Industry"	1981
The Peterkin Lecture at Rice University "Deregulation: Ideology or Logic?"	1981
FTC Seminar on Antitrust Analysis "Viewpoints on Horizontal Mergers "Predation as a Tactical Inducement for Exit"	1982 1980
NBER Conference on Industrial Organization and Public Policy "An Economic Definition of Predation"	1980
The Center for Advanced Studies in Managerial Economics Conference on The Economics of Telecommunication "Pricing Local Service as an Input"	1980
Aspen Institute Conference on the Future of the Postal Service "Welfare Economics of Postal Pricing"	1979
Department of Justice Antitrust Seminar "The Industry Performance Gradient Index"	1979
Eastern Economic Association Convention "The Social Performance of Deregulated Markets for Telecom Services" 1979	
Industry Workshop Association Convention "Customer Equity and Local Measured Service"	1979
Symposium on Rate-making Problems of Regulated Industries "Pricing Decisions and the Regulatory Process"	1979
Woodrow Wilson School Alumni Conference "The Push for Deregulation"	1979
NBER Conference on Industrial Organization "Intertemporal Sustainability"	1979

World Congress of the Econometric Society "Theoretical Industrial Organization"	1980
Institute of Public Utilities Conference on Current Issues in Public Utilities Regulation "Network Access Pricing"	1978
ALI-ABA Conference on the Economics of Antitrust "Predatoriness and Discriminatory Pricing"	1978
AEI Conference on Postal Service Issues "What Can Markets Control?"	1978
University of Virginia Conference on the Economics of Regulation "Public Interest Pricing"	1978
DRI Utility Conference "Marginal Cost Pricing in the Utility Industry: Impact and Analysis"	1978
International Meeting of the Institute of Management Sciences "The Envelope Theorem"	1977
University of Warwick Workshop on Oligopoly "Industry Performance Gradient Indexes"	1977
North American Econometric Society Convention "Intertemporal Sustainability"	1979
"Social Welfare Dominance"	1978
"Economies of Scope, DAIC, and Markets with Joint Production"	1977
Telecommunications Policy Research Conference "Transition to Competitive Markets"	1986
"InterLATA Capacity Growth, Capped NTS Charges and Long Distance Competition"	1985
"Market Power in The Telecommunications Industry"	1984
"FCC Policy on Local Access Pricing"	1983
"Do We Need a Regulatory Safety Net in Telecommunications?"	1982
"Anticompetitive Vertical Conduct"	1981
"Electronic Mail and Postal Pricing"	1980
"Monopoly, Competition and Efficiency": Chairman	1979
"A Common Carrier Research Agenda"	1978
"Empirical Views of Ramsey Optimal Telephone Pricing"	1977
"Recent Research on Regulated Market Structure"	1976
"Some General Equilibrium Views of Optimal Pricing"	1975
National Bureau of Economic Research Conference on Theoretical Industrial Organization	

"Compensating Variation as a Measure of Welfare Change"	1976
Conference on Pricing in Regulated Industries: Theory & Application	
"Ramsey Optimal Pricing of Long Distance Telephone Services"	1977
NBER Conference on Public Regulation	
"Income Distributional Concerns in Regulatory Policy-Making"	1977
Allied Social Science Associations National Convention	
"Merger Guidelines and Economic Theory"	1990
Discussion of "Competitive Rules for Joint Ventures"	1989
"New Schools in Industrial Organization"	1988
"Industry Economic Analysis in the Legal Arena"	1987
"Transportation Deregulation"	1984
Discussion of "Pricing and Costing of Telecommunications Services"	1983
Discussion of "An Exact Welfare Measure"	1982
"Optimal Deregulation of Telephone Services"	1982
"Sector Differentiated Capital Taxes"	1981
"Economies of Scope"	1980
"Social Welfare Dominance"	1980
"The Economic Definition of Predation"	1979
Discussion of "Lifeline Rates, Succor or Snare?"	1979
"Multiproduct Technology and Market Structure"	1978
"The Economic Gradient Method"	1978
"Methods for Public Interest Pricing"	1977
Discussion of "The Welfare Implications of New Financial Instruments"	1976
"Welfare Theory of Concentration Indices"	1976
Discussion of "Developments in Monopolistic Competition Theory"	1976
"Hedonic Price Adjustments"	1975
"Public Good Attributes of Information and its Optimal Pricing"	1975
"Risk Invariance and Ordinally Additive Utility Functions"	1974
"Consumer's Surplus: A Rigorous Cookbook"	1974
University of Chicago Symposium on the Economics of Regulated Public Utilities	
"Optimal Prices for Public Purposes"	1976
American Society for Information Science	
"The Social Value of Information: An Economist's View"	1975
Institute for Mathematical Studies in the Social Sciences Summer Seminar	
"The Sustainability of Natural Monopoly"	1975
U.S.-U.S.S.R. Symposium on Estimating Costs and Benefits of Information Services	
"The Evaluation of the Economic Benefits of Productive Information"	1975

NYU-Columbia Symposium on Regulated Industries
"Ramsey Optimal Public Utility Pricing"

1975

Research Seminars:

Bell Communications Research (2)	University of California, San Diego
Bell Laboratories (numerous)	University of Chicago
Department of Justice (3)	University of Delaware
Electric Power Research Institute	University of Florida
Federal Reserve Board	University of Illinois
Federal Trade Commission (4)	University of Iowa (2)
Mathematica	Universite Laval
Rand	University of Maryland
World Bank (3)	University of Michigan
Carleton University	University of Minnesota
Carnegie-Mellon University	University of Oslo
Columbia University (4)	University of Pennsylvania (3)
Cornell University (2)	University of Toronto
Georgetown University	University of Virginia
Harvard University (2)	University of Wisconsin
Hebrew University	University of Wyoming
Johns Hopkins University (2)	Vanderbilt University
M. I. T. (4)	Yale University (2)
New York University (4)	Princeton University (many)
Northwestern University (2)	Rice University
Norwegian School of Economics and Business Administration	Stanford University (5)
	S.U.N.Y. Albany

Robert Willig Expert Testimony Provided in the Last Four Years

1. Store Cards Inquiry before the UK Competition Commission, Report of Robert Willig on behalf of General Electric Consumer Finance, 2/12/2005; testimony 3/4/2005.
2. Masimo Corporation v. Tyco Health Care Group L P. and Mallinckrodt, Inc.; United States District Court, Central District of California Western Division; Case Number CV02-4440 MRP; Expert Report 2/19/2004; Deposition, 4/2/2004; jury trial testimony, 3/10-11/2005.
3. In The Matter of Applications for the Transfer of Control of Licenses and Authorizations From Western Wireless Corporation to ALLTEL Corporation, Declaration of Robert D. Willig, Jonathan M. Orszag and Yair Eilat, Submitted to the Federal Communications Commission (WT Docket No. 05-50), March 29, 2005.
4. Statement re competitive access; to the Australian National Competition Council; on behalf of Rio Tinto Iron Ore, written statement 5/4/2005.
5. Metropolitan Intercollegiate Basketball Association v. National Collegiate Athletic Association, et al; Civil Action No. 01-0071 (MGC); Declaration, 1/16/2004; Reply Declaration 4/8/2004; Expert Report, 6/13/05; Deposition, 6/18/05.
6. In re Public Offering Fee Antitrust Litigation and Issuer Plaintiff Public Offering Fee Antitrust Litigation, In the U.S. District Court for the Southern District of New York, 98 Civ. 7890 (LMM) and 00 Civ. 7804 (LMM); Expert Report 5/25/2005; Deposition, 9/15/2005; Rebuttal Report 1/09/2008.
7. Mylan Pharmaceuticals Inc., Mylan Laboratories Inc., and UDL Laboratories Inc., v. Clifford Chance US LLP, and Clifford Chance Rogers & Wells LLP, In the United States District Court For The Northern District Of West Virginia, Civil Action No.: 1:03 CV 16; Expert Report 3/31/2006, Deposition 7/28/2006.
8. MBDA UK Limited, BAE SYSTEMS PLC, BAE SYSTEMS Defense Limited, and BAE SYSTEMS (Dynamics) Limited v. RAYTHEON COMPANY, American Arbitration Association, AAA-ICDR Case No. 50-180-T-00462-04, Declaration 4/12/2006; Deposition 4/27/2006, Testimony 5/19/2006.
9. Tessera, Inc. v. Micron Technology, Inc. et al, In the United States District Court For The Eastern District of Texas, Marshall Division, Civil Action No. 2-05cv94, Expert Report, 6/23/2006.
10. Bob L. McIntosh and Chris Petersen (d/b/a C-K Farms) v. Monsanto Company, et al., In the United States District Court for the Eastern District of Missouri, Civil No. 4:01cv00065RWS, Expert Report, 7/10/2006, Deposition 8/23/2006.
11. The SCO Group, Inc. v. International Business Machines Corporation, In the United States District Court For The District of Utah, Civil No. 2: 03-CV-0294 DAK, Expert Report 7/17/2006, Deposition 10/6/2006.

12. **GlaxoSmithKline Holdings (Americas) Inc. & Subsidiaries v. Commissioner of Internal Revenue, In the United States Tax Court, Docket Nos. 5750-04, 6959-05, Expert Report 8/31/2006.**
13. **New England Carpenters Health Benefits Fund et al.v. First Databank, Inc., and McKesson Corp. In the United States District Court for the District of Massachusetts, Civil Action: 1:05-CV-11148-PBS, Expert Report 1/24/2007; Rebuttal Expert Declaration 5/07/2007; Expert Declaration 10/15/2007; Rebuttal Expert Declaration 11/08/2007; Expert Declaration 11/28/2007. Expert Declaration 5/21/08. Expert Report 10/1/08.**
14. **Affidavit On Behalf of The NRG Companies, before the State of New York Public Service Commission, CASE 06-M-0878 - Joint Petition of National Grid PLC and KeySpan Corporation for Approval of Stock Acquisition and other Regulatory Authorizations, 7/11/2007.**
15. **In The Matter of Applications for the Transfer of Control of Licenses and Authorizations From Dobson Communications to AT&T, Declaration of Robert D. Willig and Jonathan M. Orszag, Submitted to the Federal Communications Commission on behalf of AT&T, July 12, 2007.**
16. **American Express Travel Related Services Company, Inc. v. Visa U.S.A. Inc., et al, In the U.S. District Court for the Southern District of New York, Civil Action No.1:04-CV-08967-BSJ-DEF; Expert Report 7/23/2007; Rebuttal Report 12/18/2007; Deposition 01/23-24/2008; Declaration 3/21/2008.**
17. **Jason White, Brian Polak, Jovan Harris, and Chris Craig on Behalf of Themselves and All Others Similarly Situated v. National Collegiate Athletic Association, In the United States District Court Central District of California Western Division, No. CV 06-0999 VBF (MANx); Expert Report 9/6/2007.**
18. **In re OSB Antitrust Litigation, In the United States District Court for the Eastern District of Pennsylvania, Master File No. 06-CV-00826 (PSD); Expert Report 9/24/2007; Deposition 11/15/2007.**
19. **In re Universal Service Fund Telephone Billing Practices Litigation, MDL No. 1468, All Cases, In the United States District Court for the District of Kansas; Expert Report 10/05/2007; Deposition 11/30/2007.**
20. **Cindy Cullen, Wendy Fleishman, on Behalf of Themselves and All Others Similarly Situated v. Albany Medical Center, Ellis Hospital, Northeast Health, Seton Health System, and St. Peter's Health Care Service, In the United States District Court for the Northern District of New York, Civil Action No. 06-CV-0765/ TJM/ DRH; Expert Report 2/29/2008; Deposition 3/27-28/2008.**
21. **In the Matter of Verizon New Jersey, Inc. – Resolution for Assistance Resolving Interconnection Negotiations with US Cable of Paramus/Hillsdale, Time Warner Cable,**

Cablevision, and Comcast; Before the State of New Jersey Office of Board of Public Utilities, Docket No. CO07070524; Expert Report 4/21/2008; Testimony 5/12/2008.

22. In the Matter of Rambus Inc. v. Micron Technology, Inc., et al. In the Superior Court of the State of California County of San Francisco, Civil Action No. 04-431105; Expert Report 11/08/2008; Supplemental Expert Report 12/19/2008, Deposition Testimony 5/7/2009-5/8/2009

23. AT&T and Centennial; Before the Federal Communications Commission; WT Docket No. 08-246; Expert Report 11/20/2008.

24. In the Matter of Lisa Reed and Cindy Digiannantonio v. Advocate Health Care, et al. In the Northern District of Illinois Eastern Division, Civil Action No. 06 C 3337; Expert Report 1/20/2009; Supplemental 2/27/2009; Deposition Testimony 3/23/2009-3/24/2009.

25. In the Australian Competition Tribunal: Re: Application for Review of the Deemed Decision by the Commonwealth Treasurer of 23 May 2006 under Section 44H(9) of the Trade Practices Act 1974 (CTH) in Relation to the Application for Declaration of Services Provided by the Mount Newman Railway Line, By: Fortescue Metals Group Limited; Re: Application for Review of the Deemed Decision by the Commonwealth Treasurer of 27 October 2008 under Section 44H(1) of the Trade Practices Act 1974 (CTH) in Relation to the Application for Declaration of Services Provided by the Robe Railway By: Robe River Mining Co PTY LTD & ORS; Re: Application for Review of the Deemed Decision by the Commonwealth Treasurer of 27 October 2008 under Section 44H(1) of the Trade Practices Act 1974 (CTH) in Relation to the Application for Declaration of Services Provided by the Hamersley Rail Network, By: Hamersley Iron Co PTY LTD & ORS; Re: Application for Review of the Deemed Decision by the Commonwealth Treasurer of 27 October 2008 under Section 44H(1) of the Trade Practices Act 1974 (CTH) in Relation to the Application for Declaration of Services Provided by the Goldsworthy Railway, By: BHP Billiton Iron Ore PTY LTD and BHP Billiton Minerals PTY LTD; Expert Report 6/30/2009 and 9/18/2009, Testimony 11/2/2009-11/6/2009.

CERTIFICATE OF SERVICE

I certify that I have this 17th day of November 2009 served a copy of the foregoing Reply
of Twin America, LLC by Federal Express on:

U.S. Department of Transportation
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, S.E.
Washington, DC 20590

U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

U.S. Department of Transportation
Office of the General Counsel
1200 New Jersey Avenue, S.E.
Washington, DC 20590

New York State
Office of the Attorney General
The Capitol
Albany, NY 12224-0341

James Yoon
Assistant Attorney General
Antitrust Bureau
New York State Office of the Attorney
General
120 Broadway, Suite 26 C
New York, NY 10271


David H. Coburn

EXHIBIT B

BEFORE THE SURFACE TRANSPORTATION BOARD

STB DOCKET NO. MC-F-21035

**STAGECOACH GROUP PLC. AND COACH USA, INC. ET AL.
- ACQUISITION OF CONTROL - TWIN AMERICA, LLC**

**VERIFIED STATEMENT OF PROFESSOR ROBERT D. WILLIG
IN RESPONSE TO DR. KITTY KAY CHAN**

I. Qualifications and Assignment

1. I am Professor of Economics and Public Affairs at Princeton University where I hold a joint appointment in the Economics Department and at the Woodrow Wilson School of Public and International Affairs. I am also a senior consultant with Compass Lexecon. I served as the Deputy Assistant Attorney General for Economics in the Antitrust Division of the United States Department of Justice from 1989 to 1991. A more complete description of my qualifications is presented in my Verified Statement dated November 17, 2009 and in my curriculum vitae attached thereto.
2. I have been asked by counsel for Twin America to review and respond to the statement of Dr. Kitty Kay Chan dated February 1, 2010 and the sur-reply of the State of New York (NYSAG).¹ Dr. Chan's statement is a reply to my previously filed verified statement.

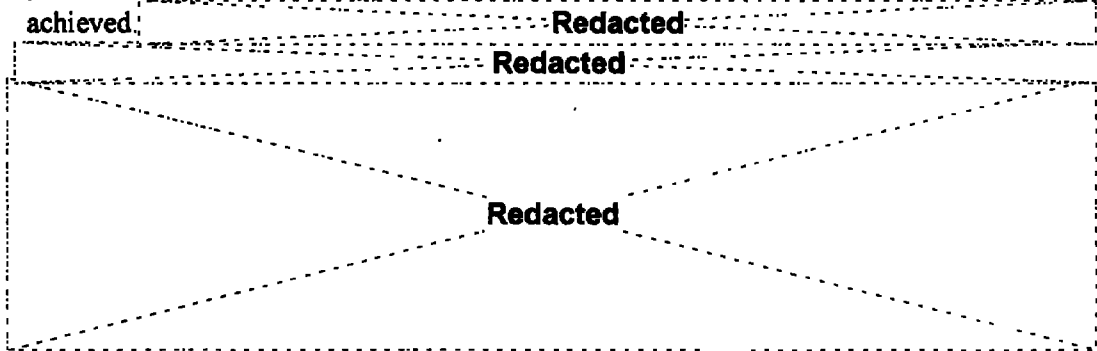
II. Summary of Conclusions

3. The NYSAG is incorrect to contend that the joint venture is not an efficiency-enhancing integration of economic activity. Twin America is structured as a permanent venture that ended competition in bus tours between the two parties. While Twin America continues to operate both the Gray Line and CitySights brand names, all aspects of the operation are under the management of a single entity. In line with this integration, the fleet of double-decker buses has been rationalized and the operations are being optimized to generate

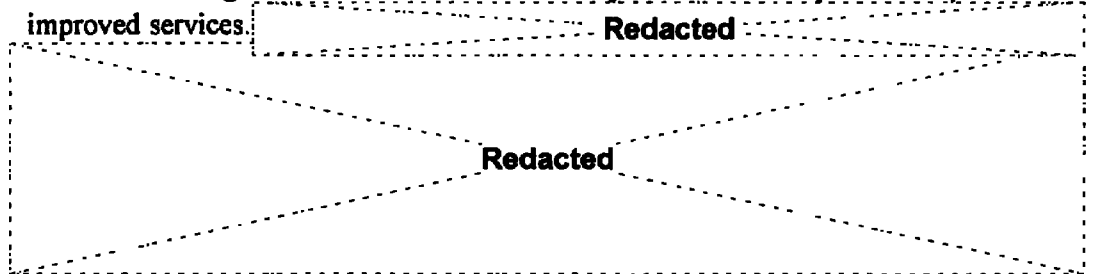
¹ Reply to Verified Statement of Professor Robert D. Willig, Dr. Kitty Kay Chan, February 1, 2010; Sur-Reply of the State of New York to Reply of Applicants To Comments of the New York State Attorney General Dated November 17, 2009, February 1, 2010.

synergies and efficiencies. Any profits and risks are shared by the joint venture's participants.

4. I disagree with Dr. Chan's contention that the synergies and efficiencies are speculative and unverified. In this instance, the joint venture has been in operation for almost one year, which provides the opportunity to observe directly what cost savings have been achieved.



5. These cost savings have been achieved while the joint venture has provided equivalent or improved services.



suggesting the inaccuracy of Dr. Chan's contention that cross-ticketing may not decrease passenger wait times because bus passenger seating capacity limits may be exceeded.

6. I also disagree with Dr. Chan's assertions that the price increases implemented on Gray Line and CitySights double-decker tours are indicative of the exercise of market power and indicative that the antitrust relevant market is double-decker bus tours. Dr. Chan's analysis of prices does not constitute an application of the hypothetical monopolist test laid out in the Merger Guidelines to delineate a relevant market. Dr. Chan does not attempt to examine whether the prices of competing tourist attractions and tours also increased, which is a necessary part of a proper analysis of the implications of price rises for market power or relevant market definition. The evidence suggests that the prices of other attractions and tours also increased.
7. I provide support for these conclusions below.

III. Joint Venture Meets Single Firm Test

8. The NYSAG alleges that the Twin America joint venture does not meet my "single firm" analysis. The NYSAG alleges that Twin America is not an efficiency-enhancing integration of economic activity. It alleges that [REDACTED] do not justify the elimination of competition. It also states that [REDACTED] According to the NYSAG, these facts invalidate my single firm analysis.

9. In my opinion, the NYSAG misinterprets my application of the Antitrust Guidelines for Collaborations Among Competitors by focusing on relatively superficial structural differences between Twin America and a merger rather than by focusing on whether the joint venture's competitive effects are more similar to those of a competitor collaboration or to those of a merger. Twin America is a joint venture, not a merger between CitySights Twin LLC and IBS.² The relevant inquiry must focus on the competitive effects emanating from this combination as structured. I determined that, from a competitive effects perspective, Twin America functions as a merger between competitors rather than as collaboration between competitors.³

10. First, Twin America is structured as **Redacted**
- Redacted**
- Redacted** are characteristics of an integrated joint venture.

11. Second, Twin America is a single integrated entity and has ended competition between the two parties in tour buses. Twin America maintains both CitySights and Gray Line branded double-decker buses and other tour vehicles, and sells tickets under separate brand names. However, all aspects of the operations are now under the management of a single entity, Twin America. The operation of the assets is conducted solely by the joint

² CitySights Twin L.L.C was created by CitySights L.L.C.

³ In my previous report, I referred to the Antitrust Guidelines for Collaborations Among Competitors for support in determining that the Twin America joint venture should be analyzed as a merger, that is as a single entity, for purposes of determining its competitive effects. See Antitrust Guidelines for Collaborations Among Competitors, issued by the Federal Trade Commission and the U.S. Department of Justice, April 2000 at 4-5.

venture entity, Twin America. Consolidations of operations rarely happen overnight. In the case of Twin America, the joint venture was formed in late March 2009, immediately prior to the high season for tourism. From a business perspective, it made economic sense for Twin America to proceed cautiously in implementing changes that would disrupt or compromise the Joint Venture's ability to serve its customers during peak season.

12. Unlike Dr. Chan, I do not find the continuation of separate brand names to be significant evidence of a lack of economic integration. Maintaining prior brand names is not unusual in a fully consummated merger between two parties. In essence, Twin America operates as a production joint venture producing a similar output that is sold under two brand names. The production of the output that is sold this way is intended to be managed as a harmonized and integrated unity.
13. Third, Twin America has rationalized its overall fleet of double-decker buses to operate these assets more efficiently, particularly during the recession. The integration of City Sights' and Gray Line's double-decker operations is expected to generate significant efficiencies by combining inputs, output of services, and decision-making within one entity, which I address in more detail below.

IV. The Expected Synergies and Cost Efficiencies Are Not Vague or Speculative

A. The predicted \$7-11 million in synergies and cost savings were based on reasonable projections

14. Dr. Chan alleges that the synergies and efficiencies estimated by Twin America are speculative, unverified, and contradict economic logic and evidence.⁴ I find Dr. Chan's allegation to be meritless. Dr. Chan fails to acknowledge that the synergy and efficiencies were addressed in the Verified Statement of Ross Kinnear submitted at the time of my original statement. Mr. Kinnear detailed the cost savings resulting from rationalizing the fleet of double-decker and other vehicles, and other direct and indirect costs, including payroll, maintenance costs, and purchasing costs. He also identified other cost savings that were anticipated but had not yet been realized. The cost savings discussed by Mr. Kinnear were based on five months of combined operations during the peak season. Redacted

Redacted

15. Prior to the combination of operations, the synergies and efficiencies expected from a merger or joint venture are necessarily projected estimates. In my experience, it is not uncommon for the parties to make multiple evaluations of the expected synergies and

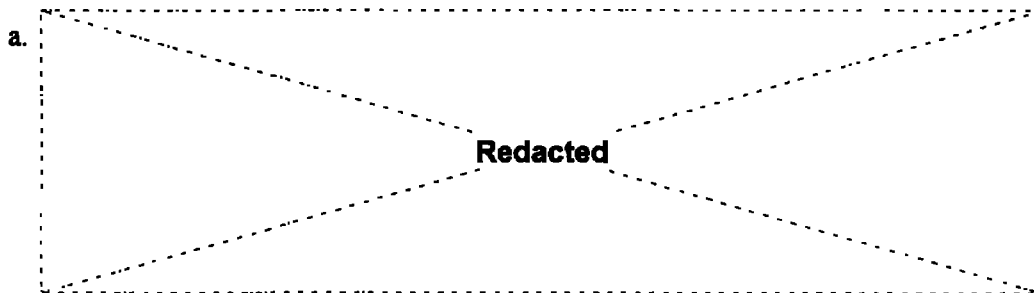
⁴ See Chan Statement at ¶ 3. ("However, the efficiencies and synergies which Dr. Willig proposed are in general speculative and have not been verified.")

efficiencies as more information is learned about each firm's operating practices during the integration process both before and after consummation. Typically, some anticipated synergies are bigger or realized more quickly than previously thought, others are smaller or take more time to realize, some may turn out to be unachievable, and yet others that were previously unforeseen are realized.

16. As Coach and CitySights engaged in negotiations to set up the joint venture, several attempts were undertaken to estimate the cost savings likely to be achieved by combining the operations and assets of the two companies. The \$7-11 million synergy estimate by Coach was based on a high-level analysis which assumed 10% cost savings with no reduction in output.⁵ An earlier Coach projection, created around November 2008, estimated potential synergies and efficiencies of \$8.5 million.⁶
17. Given that anticipated synergies and efficiencies are projections, verification of these pre-consummation of the joint venture would have involved assessing their likelihood and magnitude based on information available at that time. However, in this instance, the joint venture has been in operation for almost one year, and data are available to see what synergies and efficiencies have been achieved, and what plans have been put in place to achieve future cost savings.

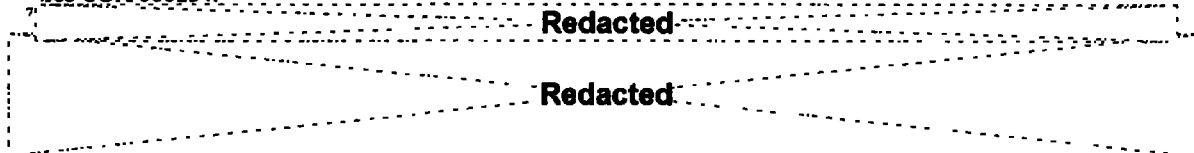
B. Synergies and Efficiencies Have Been Achieved

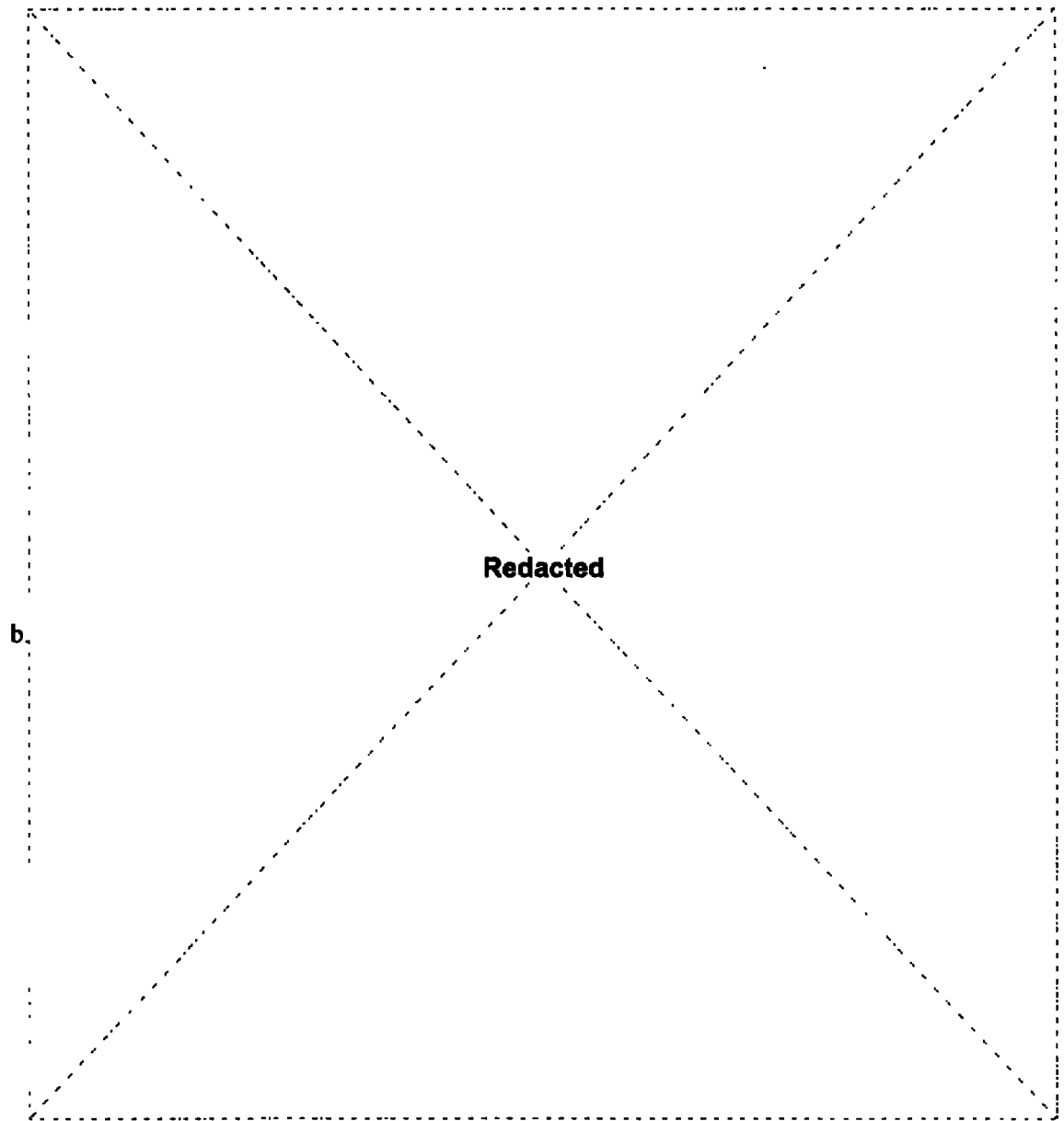
18. A review of Twin America's operating costs shows that cost savings have been realized by the combination of the two enterprises. As shown in Exhibit 1, Twin America's operating costs for the nine months ending December 31, 2009 were significantly lower than the sum of the two separate entities' costs for the same period ending December 31, 2008 due to improved operating practices in a number of major cost categories.⁷ I discuss these improved operating practices and the cost savings they generated below.



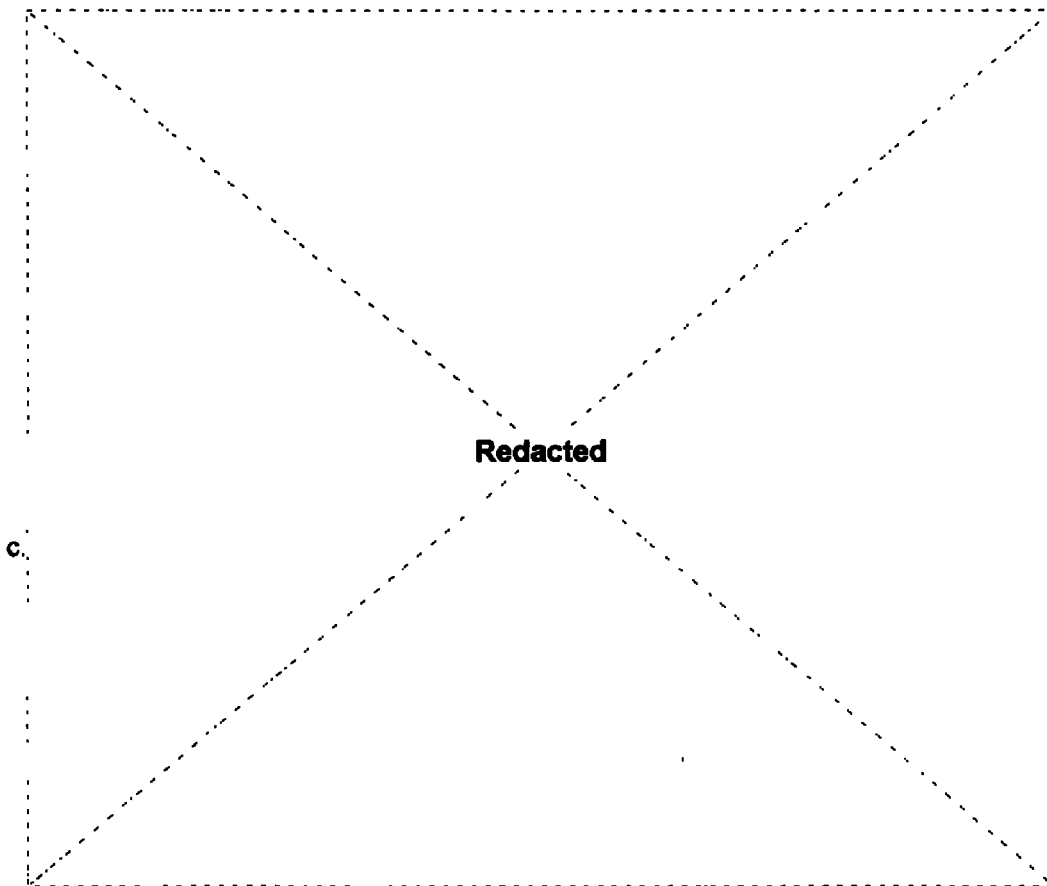
⁵ See COA 000243.

⁶ See COA 000254.





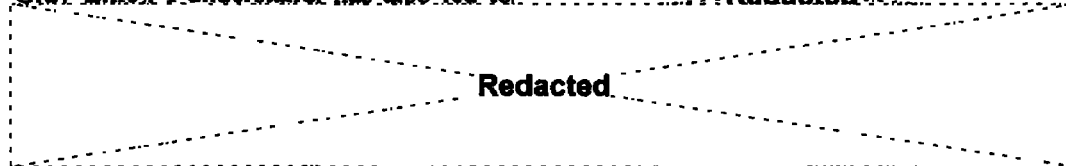
8	Redacted
9	Redacted
	Redacted
10	Redacted
11	Redacted



c.

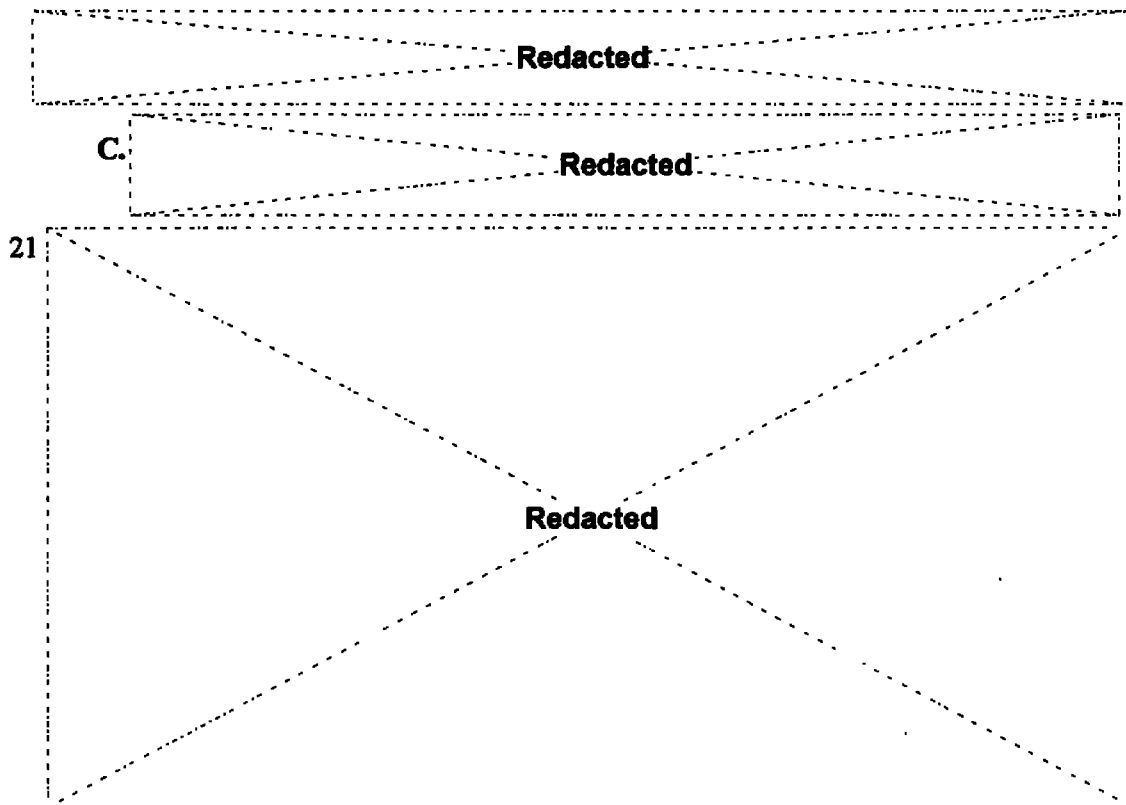
19. Across two of these three categories (excluding fuel), the operating costs for the joint venture for the nine-month period to the end of 2009 are **Redacted** lower than costs were for the separate entities combined during the prior such period. The joint venture generated these cost reductions while providing equivalent or better service by applying best practices from the two previously separate entities to the combined entity, and not just by obtaining volume discounts. Contrary to Dr. Chan's claim, entry barriers are not being created by increased volume discounts. On an annualized basis, these realized cost savings will likely be: **Redacted**

20. Twin America's greater focus on operating efficiency (compared particularly to that of Gray Line). I understand, has also led to: **Redacted**



12

Redacted
Redacted



22. Data on customer wait times are not available, but there is no evidence to suggest that wait times have increased, as Dr. Chan suggests. Dr. Chan contends that while the added flexibility of cross-ticketing could shorten wait times, the reduction in the number of buses in operation could mean that some buses are full, forcing customers to wait even longer for the next bus.¹³ Redacted

Redacted suggests that buses reaching seating capacity limits is not a valid concern.

23. The synergies generated by:

Redacted

Redacted

Redacted

An increase in this ratio represents fewer resources being used to generate the same or greater output. Exhibit 2 shows the

Redacted

¹³ See Chan Statement at ¶ 8.

¹⁴ Redacted

¹⁵ Redacted

Redacted

Redacted

24. Of relevance to Dr. Chan's claim that bus capacity limits are a problem, is **Redacted**

Redacted

Redacted

This

outcome is inconsistent with Dr. Chan's claim that Twin America has reduced bus seating capacity to the detriment of customers. On the contrary, it is consistent with an improved availability of buses for customers – an improvement in service. Moreover, Dr. Chan contends that cross-ticketing may not decrease passenger wait times because passenger seating capacity limits on buses may be exceeded. The data show that the

Redacted

Redacted

suggesting that Dr. Chan's contention is inaccurate ¹⁶

25

Redacted

26. This episode highlights the City of New York's role in greatly affecting a tour company's ability to offer a successful service. It should be noted that CitySights and Gray Line are not the only tour transportation companies loading and unloading at sites in Times Square and other highly attractive tourist destination locations. To the extent that a lack of bus stops creates a barrier to entry, it is within the power of the City to facilitate entry. If the City were to conclude that tourists would benefit from the entry of additional double-decker bus tour companies, it could actively promote the availability of additional bus stops.

D. Cost efficiencies are welfare enhancing

27. The costs savings created by the synergies and efficiency improvements brought about by the consolidation of the joint venture parties' separate entities represent a welfare

Redacted

¹⁶ See Chan Statement at ¶ 8. ("Cross-ticketing could only decrease wait time if there is enough free space on the vehicles to accommodate the same number of passengers.")

improvement. As I discussed in my first statement, economic welfare is enhanced when the same (or a higher) level of output is generated using fewer inputs. The lower costs incurred by Twin America compared to the costs of the separate entities while generating an improved service with more trips represents fewer inputs (capital and labor) being used to generate a higher output. This improves economic welfare and is in the public interest.

28. In a competitive economy, the resources made redundant by efficiency improvements will be redeployed to more productive uses. This is a standard tenet in economics. Antitrust analysis does not examine to what other specific uses and when the resources freed by efficiency improvements are or will be deployed; rather, it focuses on whether the efficiencies will be realized. In this instance, as I discussed above, efficiencies are being realized.

V. Dr. Chan's Analysis of Price Changes Does Not Demonstrate the Exercise of Monopoly Power or Establish that the Relevant Market is Double-Decker Bus Tours

A. Dr. Chan's market power analysis is flawed

29. Dr. Chan criticizes my analysis as inconsistent with the Merger Guidelines. She contends that the relevant market is double-decker tour buses and that the joint venture enabled Twin America to exercise market power. She seems to base her opinion on a few specific facts. First, Coach increased the prices of its double-decker bus tours by 10-17% from the previous month to February 2009, just prior to the joint venture, while in the period February 2007 to August 2008, Coach had increased its prices only 1% to 3%.¹⁷ Second, Twin America raised the prices of CitySights double-decker bus tours post-joint venture by 10-17%.¹⁸ Dr. Chan asserts that these two facts indicate that the joint venture was able to exercise market power to increase prices at a rate not previously attained. In addition, Dr. Chan considers these two facts to be evidence that double-decker bus tours are in a separate relevant market from other tours and tourist activities. Dr. Chan appears to suggest that her identification of these two pieces of information constitutes an analysis consistent with the Merger Guidelines. I disagree with Dr. Chan's analyses and opinions.
30. Dr. Chan's pricing analysis is both misleading and economically flawed. First, Dr. Chan's pricing analysis should not be interpreted as a hypothetical monopolist test under the Merger Guidelines. This test seeks to delineate the relevant product market by asking whether a hypothetical profit-maximizing monopoly seller of a candidate group of

¹⁷ Chan Statement at ¶¶ 13 and 14. Dr. Chan also compares the February 2009 prices to the August 2008 prices, which shows a lower price increase of 7% to 10% (See Chan Statement at Table 1b). The price increase is lower for this comparison because Gray Line fares were higher in August 2008 than January 2009 due to fuel surcharges Coach lowered its fares in January 2009 back to its pre-fuel surcharge February 2007 levels.

¹⁸ Chan Statement at ¶ 14

products could profitably impose a small but significant and non-transitory price increase. If the hypothetical monopolist would not find such a price increase profitable, the candidate group of products is widened to include other products consumers would consider to be alternatives, and the test is run again. The test is repeated with additional alternative products being included at each iteration until a group of products is identified for which the hypothetical monopolist would find it profitable to increase prices, thus delineating this group of products as a relevant antitrust market.

31. Dr. Chan seems implicitly to represent her observation of Twin America's fare increase in February 2009 as being a hypothetical monopolist test in which she treats Twin America as being a hypothetical monopolist of double-decker bus tours. However, Dr. Chan's analysis is no such test. She assumes that because Coach, and subsequently Twin America on the CitySights branded tours, were able to raise list prices on double-decker tours, this constitutes evidence of a relevant antitrust market.¹⁹ Dr. Chan makes no attempt to identify the appropriate candidate market for applying the hypothetical monopolist test. Nor does she examine whether a price increase by a hypothetical monopolist over a candidate group of products would be profitable given unchanging other salient conditions such as costs, the overall level and character of demand, and prices charged for substitute services.

B. Dr. Chan's Analysis of Price Increases is Inconsistent with the Facts

32. Exhibit 3 presents a history of Gray Line's prices over time. In percentage terms, price increases ranged from 3.4% to 13.0% (see Exhibit 3).²⁰ Focusing on Gray Line's four most popular double-decker tours, Downtown Loop, All Loops, Essential, and Uptown Loop tours, prices increased \$2 per adult ticket prior to August 2008 to reflect higher fuel charges, and prices were increased again in February 2009 by \$5 per adult ticket after having been decreased in January 2009 by \$2 per ticket to reflect lower fuel costs.
33. Dr. Chan refers to the February 2009 period as "the time when the joint venture agreement was being finalized."²¹ This is factually incorrect. My understanding, based on

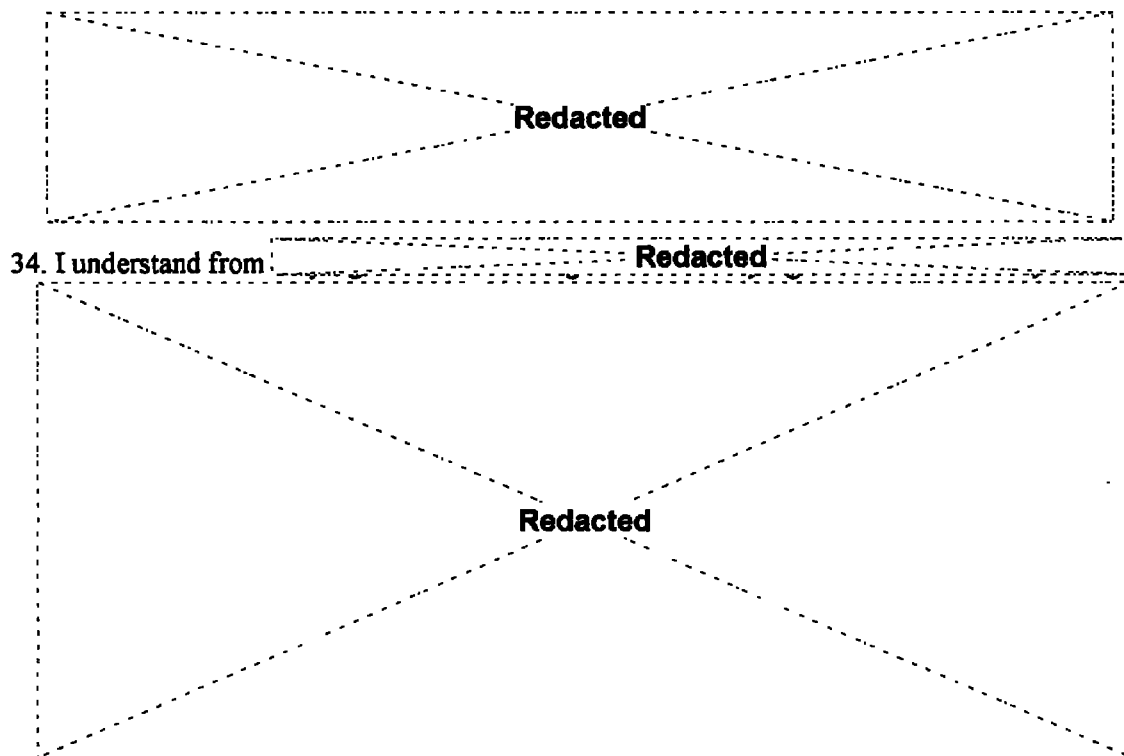
¹⁹ Dr. Chan seems to represent Gray Line's double-decker bus prices as increasing while its non-double-decker tour prices did not. A review of Gray Line's prices shows that this is not generally correct. Exhibit 3 shows that between February 2007 and August 2008, Gray Line increased the prices of some its non-double-decker bus tours (The History Channel, Manhattan Comprehensive, Downtown & Statue of Liberty, and Downtown & Empire State tours), and lowered the prices of several double-decker bus tours (Multilingual and ShowBiz Insider tours). The ShowBiz Insider tour price was decreased by \$20 per adult ticket before it was discontinued in June 2009. **Redacted**

Redacted
understand that a number of smaller specialist tour companies, such as JTB, which has operations in Japan, offer such foreign language services.

²⁰ I understand that **Redacted**

Redacted
Redacted

²¹ Chan Statement at ¶ 13.



35. In addition to the evidence that the price increases were not dependant on the creation of the joint venture, Dr. Chan's approach is not sufficient to establish that double-decker bus tours are a separate relevant market and that Twin America has exercised market power. Dr. Chan makes this claim by looking at Gray Line's and CitySights' price increases in isolation. Many other tours and attractions in New York City make up the full range of competing alternative products to double-decker tours. Dr. Chan has performed no analysis of which other tour products consumers might consider substitutes for double-decker bus tours, and changes in the prices of those competing products. I have examined the price changes of other competing tours in New York City to determine if Gray Line and City Sight tour prices were moving in isolation relative to other competing substitutes. As Exhibit 4 shows, Circle Line increased its rates by 12.9% to 21.1% from 2008 to 2010, NY Water Taxi increased its fares by 25%, Harlem Gospel Tour rates increased 10%.²³ The list price increases taken by Gray Line and Twin America are not dissimilar to, and in many cases are lower than those taken by other competing NYC tour

²² Promotions and discounts for double-decker bus tours are also a feature of pricing. For example, Twin America offers a web-special discount of \$5 on the adult ticket price for both its Gray Line and CitySights double-decker bus tours. Including free admission to another attraction with the price of the double-decker tour ticket is also used to promote tickets. Discounting occurred before the joint venture and continues to occur; there is no evidence that the level of discounting decreased after the consummation of the joint venture.

²³ Tour prices appear to have increased in some other cities as well. I understand from Coach USA that in Chicago it increased the price of its one-day trolley and double-decker sightseeing tour by \$4 to \$29 for adults and by \$2 to \$17 for children in May 2008; it previously increased the price of its two-day adult ticket by \$10 to \$45 in May 2007.

operators during the same time period.²⁴ NYC taxi fares were also rising during this time period. In May 2009, the state legislature passed a resolution to increase the base fare for NYC taxis by \$0.50 to \$3.00 to cover a deficit at the Metropolitan Transportation Authority; the fare increase came into effect in November 2009.²⁵

36. Dr. Chan's evidence and analysis of the relevant market and the exercise of market power by Twin America are not economically sound. The increase in Gray Line's double-decker tour list prices prior to reaching an agreement with CitySights to form a joint venture and Twin America's decision to increase the prices of CitySights double-decker tours post-joint venture are not sufficient evidence to conclude that the relevant market is double-decker tour buses and that market power has been exercised by the joint venture.

37. Dr. Chan seems to rely heavily for her conclusions on an internal Gray Line document's statement that one of the benefits from the joint venture is **Redacted**.²⁶ **Redacted** This statement is consistent with the fact that unified management of the double-decker bus fleets has enabled significant efficiencies from their integrated scheduling and know-how, as discussed above. However, this statement cannot be validly read as evidence of market power created by the joint venture in an antitrust relevant market. Business people do not use the word "market" to mean antitrust relevant market, and it is completely invalid and unreliable to infer market power or that double-decker bus tours constitute an antitrust relevant market from **Redacted** **Redacted**.

VI. Barriers to Entry are Low for Double-Decker Bus Tours in NYC

38. The desirable outcomes of competition are often the result of the ease with which firms can enter and exit a business. With ease of entry, if the price charged for a product by the incumbent firm or firms is too high, another firm will enter at a lower price to capture sales and profit from the incumbents. Similarly, if an entrant can generate the same output as the incumbent firm or firms but at a lower cost, it will enter to capture share and divert profits from the incumbents. Entry need not even occur to ensure that the incumbents maintain competitive prices and costs – the threat of entry can be sufficient to keep them in check.

39. Not surprisingly, given the importance of entry in maintaining competition, assessing barriers to entry is a key part of an antitrust inquiry. As I discussed in my first statement,

²⁴ As an example indicating that double-decker tours compete with other tour operations, Exhibit 5 presents an advertisement appearing in the January/February Amtrak Magazine for Amtrak Vacations. The ad offers a \$530 tour package to New York City, which includes roundtrip rail from Washington, DC, two nights' accommodations at the Belvedere Hotel or similar hotel, admission to the Top of the Rock and the option of either a Broadway show, All Loops double-decker tour, or admission to the Empire State Building

²⁵ <http://www.yellowcabnyc.com/nyc-taxi/nyc-taxi-fares-increase-sunday>, accessed on March 8, 2010.

²⁶ See Chan Statement at ¶ 3

barriers to entry into the double-decker bus tour business in New York City are low.²⁷ One of the most important indicators of low entry barriers looked for in an antitrust inquiry is evidence that entry has in fact occurred. Here, CitySights is such an example for double-decker bus tours in New York City. CitySights' entry easily met the Merger Guidelines key criteria – it was timely and created a profitable market impact.

A. Dr. Chan's assertion that regulatory barriers exist is without support

40. Dr. Chan appears to make the claim that entry into the double-decker bus tour business in New York City would be difficult because there are no stops available for a would-be entrant.²⁸ This apparent assertion is without support. There is no evidence to suggest that the City would be unwilling or unable to allocate stops to an entrant if doing so would be in the consumers' interest. As I noted above in relation to the movement of Twin America's stops in Times Square, it is within the power of the City to issue, revoke, or move bus stops at its reasonable discretion and thus, influence the supply of bus tour services operating within the City.

B. Barriers to entry are not increased by the JV's use of best practices

41. Dr. Chan also appears to argue that the efficiencies created by the joint venture increase barriers to entry because an entrant would be unable to match the low cost levels Twin America can achieve.²⁹ This argument is also without merit.
42. The efficiencies the joint venture has created, as discussed above, are largely the result of applying best operating practices from each of the two separate entities to the combined entity. These cost savings are not simply the result of the combined entity's having greater purchasing power. A potential entrant with superior operating practices could have competitive or lower costs without being as large as the incumbent. Again, CitySights is evidence that this can happen. CitySights was a small entrant operating only eight buses, but it chose an efficient operating strategy that enabled it to grow and compete successfully with Gray Line. Telling of the success of CitySights' performance is that many of the operating practices, **Redacted** adopted by the joint venture were **Redacted**. **Redacted** Nothing in Dr. Chan's analyses of entry barriers causes me to change my opinion that entry is likely and can be achieved in a timely manner and at sufficient scale to discipline any anticompetitive exercise of market power by the joint venture.

²⁷ See Willig Statement at ¶¶ 34-46.

²⁸ See Chan Statement at ¶ 18.

²⁹ See Chan Statement at ¶ 22.

I declare under penalty of perjury
that the foregoing is true and correct.
Further, I certify that I am qualified
and authorized to file this Verified
Statement.

Executed on March 10, 2010

Robert D. Willig

Robert D. Willig

EXHIBITS

Exhibit 1

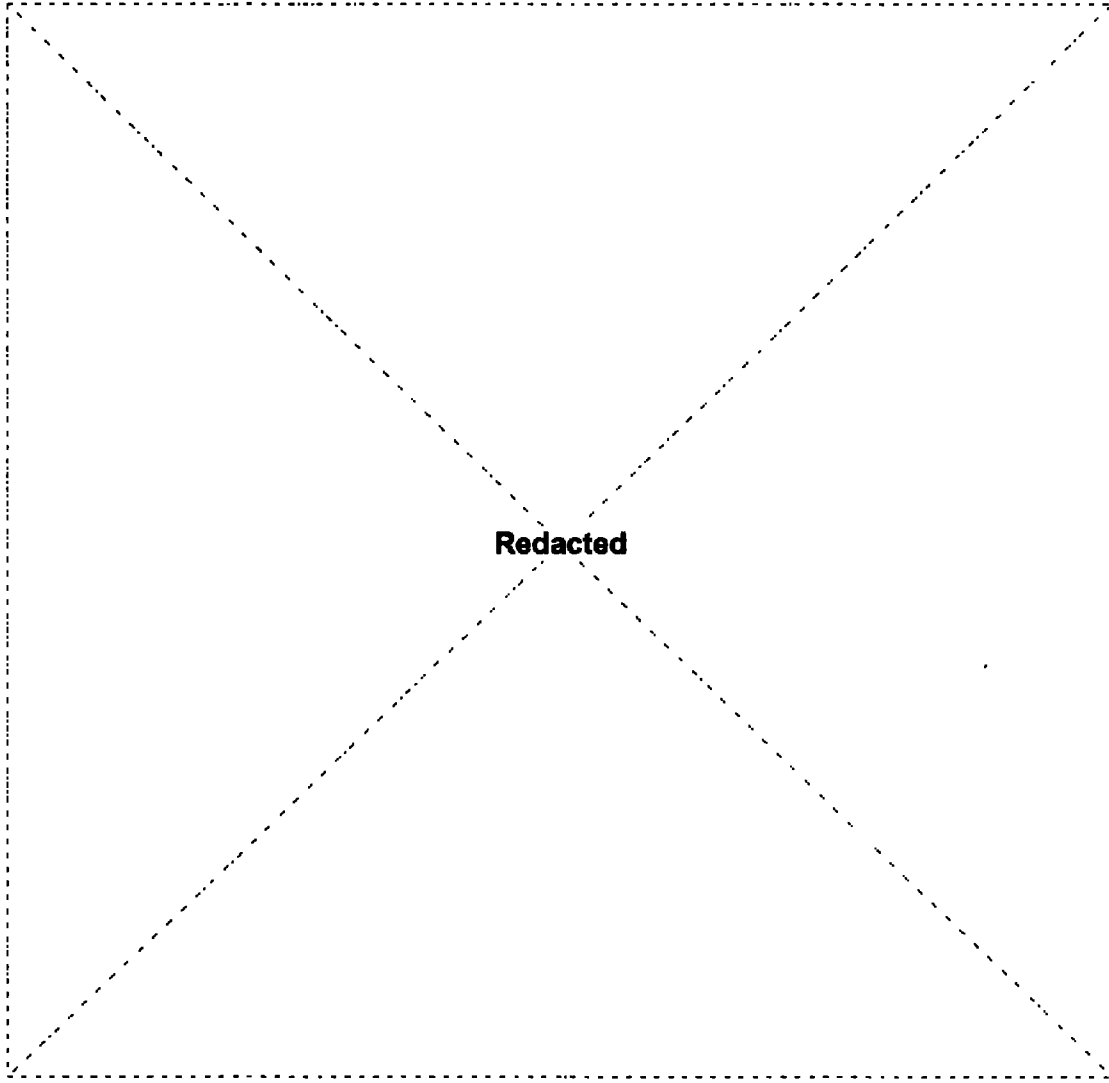


Exhibit 2

Redacted

Exhibit 4
Competing NYC Tours Rates

Company	2008	Adult 2009	2010	2008	Child 2009	2010
Circle Line Sightseeing (3-hr cruise)	\$31.00	\$34.00	\$35.00	\$18.00	\$21.00	\$22.00
(2-hour cruise)	\$27.00	\$30.00	\$31.00	\$16.00	\$19.00	\$20.00
(The Beast)	\$19.00	\$22.00	\$23.00	\$13.00	\$16.00	\$17.00
(75-min. cruise)	\$21.00	\$24.00	\$25.00	\$13.00	\$16.00	\$17.00
(75-min. cruise Special incl in AAT tour)						
NY Waterway 90-min	\$26.00	\$26.00	\$26.00	\$15.00	\$15.00	\$15.00
NY Water Taxi (Harbor Pass)	\$20.00	\$25.00	\$25.00	\$15.00	\$15.00	\$15.00
(Statue of Liberty Cruise Special)	\$25.00	\$15.00	\$15.00	\$15.00	\$15.00	\$15.00
SOL Ferry	\$12.00	\$12.00	\$12.00	\$5.00	\$5.00	\$5.00
Manhattan By Sail	*	\$39.00	\$39.00		\$17.00	\$17.00
ESB	\$20.00	\$20.00	\$20.00	\$14.00	\$14.00	\$14.00
Skyride	\$29.50	\$36.00	\$36.00	\$21.50	\$18.00	\$25.00
Top of the Rock	\$20.00	\$20.00	\$21.00	\$13.00	\$13.00	\$14.00
Harlem Gospel (TG1)	\$50.00	\$55.00	\$55.00	\$35.00	\$39.00	\$39.00
(TG2)	\$50.00	\$55.00	\$55.00	\$35.00	\$39.00	\$39.00
Liberty Helicopter (Lady Liberty)	\$110.00	\$120.00	\$120.00	\$110.00	\$120.00	\$120.00
(Big Apple)	\$140.00	\$150.00	\$150.00	\$140.00	\$150.00	\$150.00
(New York, NY)	\$204.00	\$215.00	\$215.00	\$204.00	\$215.00	\$215.00
Manhattan Helicopters (Express Saver)	N/A	N/A	\$125.00	N/A	N/A	\$125.00
(Express)	\$175.00	\$175.00	\$170.00	\$175.00	\$175.00	\$170.00
(Deluxe)	N/A	\$205.00	\$205.00	N/A	\$205.00	\$205.00
Madame Tussaud's	\$32.46	\$37.93	\$38.65	\$25.96	\$30.35	\$31.03
MOMA	\$20.00	\$20.00	\$20.00	Free	Free	Free
Metropolitan Museum	*	\$20.00	\$20.00		Free	Free
Guggenheim Museum	*	\$18.00	\$18.00		\$18.00	\$18.00
Museum of Natural History	\$15.00	\$15.00	\$15.00	\$6.00	\$9.00	\$9.00
Museum of the City of New York	\$7.00	\$9.00	\$10.00	\$7.00	\$9.00	\$10.00
Ripley's Believe it not	\$27.04	\$29.21	\$29.21	\$20.53	\$21.62	\$21.62
Ground Zero Museum Workshop	\$25.00	\$25.00	\$25.00	\$19.00	\$19.00	\$19.00
Tribute WTC Visitor Center	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
UN Tour	\$13.50	\$16.00	\$16.00	\$7.50	\$9.00	\$9.00
SSS Museum	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Intrepid	\$18.50	\$19.50	\$19.50	\$13.50	\$14.50	\$14.50
MSG Entertainment: Radio City Tour	*	\$18.50	\$18.50		\$10.00	\$10.00
MSG All Access Tour	*	\$18.50	\$18.50		\$12.00	\$12.00
On Location Tours (TV & Movie ad)	\$36.00	\$38.00	\$40.00	\$22.00	\$22.00	\$24.00
(Sex & the City)	\$39.00	\$42.00	\$44.00	N/A	N/A	N/A
(Gossip Girl)	N/A	\$40.00	\$42.00	N/A	\$40.00	\$42.00
(Sopranos)	\$42.00	\$44.00	\$46.00	\$22.00	N/A	N/A
(Central Park)	\$17.00	\$20.00	\$22.00	\$12.00	\$12.00	\$14.00
Amadeo Travel Solutions (Boston)	\$149.00	\$149.00	\$149.00	\$149.00	\$149.00	\$149.00
(Philadelphia)	\$149.00	\$149.00	\$149.00	\$149.00	\$149.00	\$149.00
(Washington)	\$149.00	\$149.00	\$149.00	\$149.00	\$149.00	\$149.00
Dinner Cruises						
Spirit Cruises: Sun-Thur	\$104.94	\$98.29	\$99.62	N/A	N/A	N/A
Fri	\$124.89	\$108.93	\$110.26	N/A	N/A	N/A
Sat	\$124.89	\$111.59	\$112.92	N/A	N/A	N/A
Bateaux: Sun-Thur	\$144.84	\$152.82	\$154.15	N/A	N/A	N/A
Fri	\$164.79	\$166.12	\$167.45	N/A	N/A	N/A
Sat	\$164.79	\$172.77	\$174.10	N/A	N/A	N/A
World Yacht: Sun-Thur	\$116.28	\$122.43	\$119.80	N/A	N/A	N/A
Fri + Sat	\$127.97	\$137.92	\$134.98	N/A	N/A	N/A
Sunday Brunch (May-Oct)	\$72.47	\$77.36	\$75.18	N/A	N/A	N/A

Notes: * represents "No agreement"

Source: [3rdpartyNetRates.pdf](#)

Exhibit 4
Competing NYC Tours Rates
Indexed: 2008 = 100

Company	2008	Adult 2009	2010	2008	Child 2009	2010
Circle Line (Average)						
Circle Line Sightseeing (3-hr cruise)	100.0	109.7	112.9	100.0	116.7	122.2
(2-hour cruise)	100.0	111.1	114.8	100.0	118.8	125.0
(The Beast)	100.0	115.8	121.1	100.0	123.1	130.8
(75-min. cruise)	100.0	114.3	119.0	100.0	123.1	130.8
(75-min. cruise Special incl in AAT tour)						
NY Waterway (Average)						
NY Waterway 90-min	100.0	100.0	100.0	100.0	100.0	100.0
NY Water Taxi (Harbor Pass)	100.0	125.0	125.0	100.0	100.0	100.0
(Statue of Liberty Cruise Special)	100.0	60.0	60.0	100.0	100.0	100.0
SOL Ferry	100.0	100.0	100.0	100.0	100.0	100.0
Manhattan By Smi						
ESB	100.0	100.0	100.0	100.0	100.0	100.0
Skyride	100.0	122.0	122.0	100.0	83.7	116.3
Top of the Rock	100.0	100.0	105.0	100.0	100.0	107.7
Harlem Gospel (TG1)	100.0	110.0	110.0	100.0	111.4	111.4
(TG2)	100.0	110.0	110.0	100.0	111.4	111.4
Liberty Helicopter (Average)						
Liberty Helicopter (Lady Liberty)	100.0	109.1	109.1	100.0	109.1	109.1
(Big Apple)	100.0	107.1	107.1	100.0	107.1	107.1
(New York, NY)	100.0	105.4	105.4	100.0	105.4	105.4
Manhattan Helicopters (Average)						
Manhattan Helicopters (Express Sevier)						
(Express)	100.0	100.0	97.1	100.0	100.0	97.1
(Deluxe)						
Madame Tussaud's (Average)						
Madame Tussaud's	100.0	116.9	119.1	100.0	116.9	119.1
MoMA	100.0	100.0	100.0			
Metropolitan Museum						
Guggenheim Museum						
Museum of Natural History	100.0	100.0	100.0	100.0	150.0	150.0
Museum of the City of New York	100.0	128.6	142.9	100.0	128.6	142.9
Ripley's Believe it not	100.0	108.0	108.0	100.0	105.3	105.3
Ground Zero Museum Workshop	100.0	100.0	100.0	100.0	100.0	100.0
Tribune WTC Visitor Center	100.0	100.0	100.0	100.0	100.0	100.0
UN Tour (Average)						
UN Tour	100.0	118.5	118.5	100.0	120.0	120.0
SSS Museum	100.0	100.0	100.0	100.0	100.0	100.0
Intrepid	100.0	105.4	105.4	100.0	107.4	107.4
MSG Entertainment Radio City Tour						
MSG All Access Tour						
On Location Tours (Average)						
On Location Tours (TV & Movie ad)	100.0	105.6	111.1	100.0	100.0	109.1
(Sex & the City)	100.0	107.7	112.8			
(Gossip Girl)						
(Sopranos)	100.0	104.8	109.3	100.0		
(Central Park)	100.0	117.6	129.4	100.0	100.0	116.7
Amadeo Travel Solutions (Average)						
Amadeo Travel Solutions (Boston)	100.0	100.0	100.0	100.0	100.0	100.0
(Philadelphia)	100.0	100.0	100.0	100.0	100.0	100.0
(Washington)	100.0	100.0	100.0	100.0	100.0	100.0
Dinner Cruises (Average)						
Dinner Cruises						
Spirit Cruises: Sun-Thur	100.0	93.7	94.9			
Fri	100.0	87.2	88.3			
Sat	100.0	89.4	90.4			
Bateaux (Average)						
Bateaux: Sun-Thur	100.0	105.5	106.4			
Fri	100.0	100.8	101.6			
Sat	100.0	104.8	105.6			
World Yacht (Average)						
World Yacht: Sun-Thur	100.0	105.3	103.0			
Fri - Sat	100.0	107.8	105.5			
Sunday Brunch (May-Oct)	100.0	106.7	103.7			

Source: JirapornNetRates.pdf

Exhibit 5



WINTER IN VERMONT • FLAMENCO NATION

Arrive



Why

Needs

BY VICE PRESIDENT JOE BIDEN

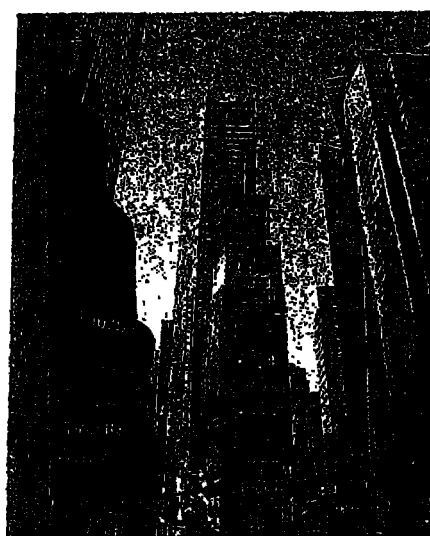
THE MAGAZINE IS AVAILABLE FOR FREE TO ALL AMTRAK TRAVELERS. MAIL OR TELEPHONE YOUR REQUEST FOR ONE.

AMTRAK

TAKE A VACATION FROM VACATION PLANNING.

Amtrak Vacations® All it takes is one call.

With Amtrak Vacations, the relaxation begins long before you get to your destination. It begins the moment you step on the train. On Amtrak®, you can eat, sleep and relax in comfort as you enjoy the ever-changing scenery. And our all-inclusive packages mean you won't have to worry about booking hotels, renting cars or buying sightseeing passes. Whether you're interested in a long trip or just a quick getaway, we offer the easiest, most enjoyable way to see America's greatest destinations—like Washington, DC, Chicago, San Francisco, Glacier National Park and many more. We can even create a custom package for you. So call 1-800-AMTRAK-2 for reservations. Or to learn more, visit AmtrakVacations.com.



NEW YORK From **\$530**


PACKAGE INCLUDES:

- Round-trip rail travel Washington, DC
- Two nights' accommodation at the Helvidere Hotel or similar hotel
- Admission to the Top of the Rock observation deck

AVAILABLE OPTIONS:

- Breakfast and lunch
- Admission to the Metropolitan Museum of Art
- Admission to the Empire State Building

Sample prices are per person based on double occupancy, tax included. Amtrak travel is for Coach accommodations. Prices and packages are subject to change without notice, and all reservations are based upon availability at time of booking. Blackout dates and other restrictions may apply. Amtrak and Amtrak Vacations are registered service marks of the National Railroad Passenger Corporation.



WASHINGTON, DC From **\$450**

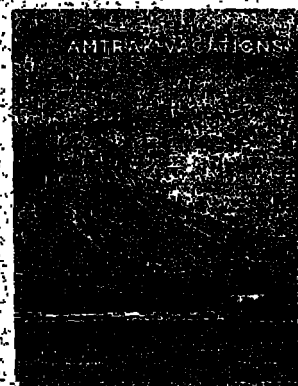
PACKAGE INCLUDES:

- Round-trip rail travel Washington, DC
- Two nights' accommodation at the Lincoln Capitol Hotel or similar hotel
- Admission to the Lincoln Memorial
- Dinner at Capital City

AVAILABLE OPTIONS:

- Breakfast and lunch
- Admission to the Smithsonian Museum of Natural History
- Admission to the Lincoln Memorial
- Admission to the Lincoln Memorial

Sample prices are per person based on double occupancy, tax included. Amtrak travel is for Coach accommodations. Prices and packages are subject to change without notice, and all reservations are based upon availability at time of booking. Blackout dates and other restrictions may apply. Amtrak and Amtrak Vacations are registered service marks of the National Railroad Passenger Corporation.



Call Amtrak Vacations
at 1-800-AMTRAK-2
or visit
AmtrakVacations.com.

Call now
for a free brochure
or view online at
AmtrakVacations.com.

Sample prices are per person based on double occupancy, tax included. Amtrak travel is for Coach accommodations. Prices and packages are subject to change without notice, and all reservations are based upon availability at time of booking. Blackout dates and other restrictions may apply. Amtrak and Amtrak Vacations are registered service marks of the National Railroad Passenger Corporation.

AMTRAK
VACATIONS®

EXHIBIT C



Continental
Guest
Services

DOUBLETREE GUEST SUITES T.S.-38

Doubletree Hotel Theatre Desk
1508 Broadway
New York, NY 10036
Tel: 212-403-6439

GRAY LINE NEW YORK SIGHTSEEING

Voucher # 8118685126
Agent ID 5/14/2010 386
Order # 4734986380

Item	Price	Qty	Amount
Downtown Loop Adult	\$44.00	1	\$44.00

Additional Information

Total: \$44.00

Tours run 7 days/week. Exchange this voucher for ticket at stop #1 7th Avenue b/w 47th & 48th Sts. Valid 24 hours. Tours subject to cancellation, schedule and availability of services. Voucher/Tickets are NON-REFUNDABLE.

EXHIBIT D



U.S. Department of Transportation
Federal Motor Carrier Safety Administration

1200 New Jersey Ave., S.E.
Washington, DC 20590

SERVICE DATE
November 17, 2009

CERTIFICATE
MC-688284-C
TWIN AMERICA LLC
D/B/A GRAY LINE NEW YORK CITYSIGHTS
NEW YORK, NY

This Certificate is evidence of the carrier's authority to engage in transportation as a common carrier of passengers, in charter and special operations, by motor vehicle in interstate or foreign commerce.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 387); the designation of agents upon whom process may be served (49 CFR 366); and schedules (49 CFR 374.305). The carrier shall also render reasonably continuous and adequate service to the public. Failure to maintain compliance will constitute sufficient grounds for revocation of this authority.

Jeffrey L. Secrist, Chief
Information Technology Operations Division

NOTE: Applicant is a nonrecipient of governmental financial assistance.

NOTE: Willful and persistent noncompliance with applicable safety fitness regulations as evidenced by a DOT safety fitness rating of "Unsatisfactory" or by other indicators, could result in a proceeding requiring the holder of this certificate or permit to show cause why this authority should not be suspended or revoked.

CPN

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

Continental Guest Services Corporation,

Plaintiff,

– against –

International Bus Services, Inc., d/b/a/ Gray
Line New York, City Sights Twin, LLC, d/b/a/
City Sights New York, Twin America, LLC,
Battery Park Hotel Management, LLC,
Hampton Inn Times Square North, Hilton
Garden Inn Times Square, New York West
35th Street HGI, On the Ave Hotel, The
Paramount Hotel New York, Park Central Hotel
(DE), LLC, Thirty East 30th Street Owner,
LLC, Times Square Hotel Operating Lessee
LLC, Lexington Hotel, LLC, W2001
Metropolitan Hotel Operating Lessee, LLC, and
Highgate Hotels, L.P.,

Defendants.

Civil Action No.: 600643/10

**AFFIRMATION OF MARK
MARMURSTEIN IN SUPPORT OF BUS
DEFENDANTS' REPLY IN SUPPORT OF
THEIR MOTION TO DISMISS AND
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

Mark Marmurstein, under penalty of perjury, hereby affirms:

1. I am the President and Chief Executive Officer of Twin America, LLC, and an officer and managing member of CitySights LLC. I submit this affirmation in support of Bus Defendants' Reply in Support of their Motion to Dismiss and Opposition to Plaintiff's Motion for Preliminary Injunction.

2. I am fully familiar with the facts and circumstances herein, and make this affirmation on the basis of personal knowledge, unless otherwise indicated.

3. Contrary to Ms. Zhang's claim in paragraph 20 of her May 7, 2010, affidavit, I work "on ground" and am intimately involved with the day-to-day operations and management of Twin America.

4. City Experts NY is the trade name for NYCS LLC, Twin America's wholly owned subsidiary formed to enter the concierge business. Contrary to Ms. Zhang's claims in paragraphs 27 and 113 of her affidavit, Twin America has experience in the concierge business, as set forth in paragraph 24 in my April 8, 2010, Affirmation in Support of Bus Defendants' Opposition to Motion for Preliminary Injunction ("April 8 affirmation"). Twin America is the "Expedia concierge" in New York. Beginning in 2008, CitySights entered an arrangement with the Marriott Marquis to sell tours through the Marriott Marquis website. Twin America has continued this arrangement. Twin America also has five visitor centers where customers can purchase third party attractions in addition to Twin America tour tickets. Customers can also purchase tickets to these third party attractions on the Twin America websites. And prior to the formation of Twin America, Gray Line operated concierge desks in New York – including desks at hotels, like the Doubletree Metropolitan Hotel in this case, that terminated Gray Line and contracted with CGSC.

5. Paragraphs 3, 7, 27, 70, 72, and 73 of Ms. Zhang's affidavit are also mistaken. Twin America is not "in the process of taking over all of [CGSC's] Concierge Desks." Nor did it enter the concierge business to "eliminate CGSC." Nor did it "target[]" or intend[] to injure [CGSC]." Rather, Twin America sought to begin its concierge business at seven Highgate hotels as a natural extension of CitySights's 2008 discussions with Highgate about partnering to offer consumer packages. As set forth in my April 8 affirmation at paragraph 23, these discussions occurred before the formation of Twin America.

6. Ms. Zhang's claim in paragraph 14 of her affidavit that I did not state in my April 8 affirmation how CGSC could purchase Twin America tickets from other sources is baffling. In paragraph 12 of my April 8 affirmation, I explained that even hotel concierges that do not receive a commission to sell Twin America vouchers may purchase vouchers for customers on the Internet, direct customers to the hotel business center to purchase vouchers on the Internet, or direct customers to a Twin America visitor center or street seller, or any of the many third party sellers of Twin America products to purchase tickets. Moreover, contrary to Ms. Zhang's claim in paragraph 17 of her affidavit, these concierges may also provide "advice concerning [] tour[s]" to customers.

7. Claims in paragraphs 16, 92, 94, 95, 97, and 112 of Ms. Zhang's affidavit are also incorrect. As I explained in paragraph 18 of my April 8 affirmation, the only time I told CGSC that Twin America would stop its commission arrangement with CGSC was in April 2009 when I told CGSC that if it did not pay Twin America the money owed, Twin America would end its commission arrangement with CGSC until it was paid. During that meeting, I asked CGSC for a letter of credit or other security, given CGSC's failure both to pay on time and to pay all of the money owed Twin America. To date, CGSC has not provided Twin America with a credit card number or letter of credit as security.

8. And as I explained in paragraphs 19 and 20 of my April 8 affirmation, Twin America stopped accepting vouchers sold through CGSC in July 2009, only after CGSC again failed to pay Twin America. At that time, CGSC owed Twin America approximately \$494,138, Gray Line \$309,121, and CitySights \$166,598. When I called Ms. Zhang to discuss CGSC's failure to pay, Ms. Zhang told me that if I didn't like CGSC's practices, CGSC wouldn't sell Twin America tickets and then hung up on me (without addressing CGSC's failure to pay).

Because CGSC told me it was no longer selling Twin America tickets, I understood that CGSC would not pay Twin America for any vouchers it sold; and thus, Twin America stopped accepting vouchers purchased through CGSC. This was the only time I stopped selling Twin America tickets through CGSC.

9. I have not instructed – nor would I instruct – street sellers or Twin America visitor centers not to sell tickets to CGSC. And I would not be able to prohibit a CGSC concierge from purchasing a Twin America voucher on the Internet using his work email, personal email, or the customer's email address, even if I wanted to – which I don't because Twin America seeks to increase, not limit, its sales. (Moreover, upon purchasing a Twin America ticket on the Internet, customers may download the voucher directly from the Twin America website's confirmation page; customers need not access an email account to download the ticket).

10. Ms. Zhang's claims in paragraph 111 of her affidavit are incorrect. As set forth in paragraphs 17 and 20 of my April 8 affirmation, CGSC has consistently failed to pay Twin America (and Gray Line and CitySights) on time. To date, CGSC still owes Twin America approximately \$58,323 and Gray Line \$26,340 – payments that are not from the "week prior," but rather, are significantly past due.

11. Ms. Zhang's claims in paragraphs 15 and 94 of her affidavit that Twin America is "causing" its street sellers to hassle CGSC patrons are untrue. So are claims in paragraphs 17, 59, 78, 79, 80, 95, and 96 of her affidavit. As I explained in paragraph 14 of my April 8 affirmation, CGSC sells Twin America vouchers – not tickets – to consumers. And thus, customers at CGSC hotels (just like customers at other New York hotels or those acquiring a ticket over the Internet),

must exchange their voucher at a Twin America visitor center (or street seller) before boarding a Twin America bus. Twin America's provision of vouchers – not tickets – to CGSC is not new. Yet, according to Twin America's managers on the street, in the past few months some consumers who have purchased vouchers at CGSC hotels have said that the concierge told them they did not need to exchange the voucher for a ticket, but could instead cut the line and directly board a Twin America bus. This is not correct, and the CGSC consumers have often been unhappy to learn that, like all hotel and Internet voucher customers, they must exchange their voucher for a ticket before boarding the bus.

12. Claims in Ms. Zhang's affidavit at paragraphs 3, 7, 27, 28, 29, 72, and 73 are further mistaken. As I stated in paragraph 33 of my April 8 affirmation, nobody at CitySights Twin, LLC, International Bus Services, Inc., or Twin America, LLC threatened CGSC or threatened to "lock up" hotel concierge desks. Nor did anyone at CitySights Twin, LLC, International Bus Services, Inc., or Twin America, LLC "admit that they were afraid that CGSC could promote a new competitor in the way it had previously 'made' CitySights." And Twin America is not entering the concierge business to keep any new double-decker sightseeing company out of the market. Nor would any such alleged plan make sense. Hotel sales are a small percentage of Twin America's distribution. CitySights was able to grow its business by selling tickets through street ticket sellers, international travel agents, ticket agents, and sales consultant, as well as the CitySights website, before CGSC sold its ticket vouchers. Hotel sales have always been less than ten percent of sales.

13. Claims in paragraphs 4, 23, 24, 29, and 31 of Ms. Zhang's affidavit are also incorrect. CGSC did not "put CitySights on the proverbial 'map,'" and CGSC did not "make" CitySights. Although I asked CGSC (and many other potential sellers) to sell CitySights

products, I did not “beg” CGSC to sell CitySights tickets. Nor did I say that without CGSC, I would be unable to fill CitySights buses. CitySights did not purchase or construct additional buses because of its agreement with CGSC. And CGSC was not responsible for filling CitySights buses. As I explained in my April 8 affirmation at paragraph 22, over 90% of CitySights (and now Twin America) sightseeing sales are through street ticket sellers, the Internet, visitor centers, travel agents, other third parties, and group billings – not hotels. (Ms. Zhang’s claim in paragraph 29 of her affidavit that I did not address how concierge desks are not a primary outlet for ticket sales is mistaken). CGSC sales in 2007 comprised only 1.59% of CitySights’ income; and in 2008 it comprised 3.76%.

14. Given that over 90% of Twin America sightseeing sales are through sources other than hotels, Ms. Zhang’s assertion in paragraphs 75, 82, 83, 84, 86, and 87 of her affidavit that concierge desks are the “preferred avenue” for consumers of double decker tours is mistaken. Her claim in paragraph 113 that CGSC is the “largest single source of ticket sales” is also incorrect. Sales through Twin America’s websites and street sellers, for example, each far outnumber sales made through CGSC.

15. Ms. Zhang’s claims in paragraphs 78 and 81 about CGSC’s refund policy are surprising. Twin America allows CGSC to refund the price of a customer’s Twin America voucher. This refund policy is not unique. Twin America allows all hotels selling its vouchers to refund the price of a customer’s voucher.

16. As I stated in paragraph 10 in my April 8 affirmation, most of the hundreds of hotels in New York City offer some form of concierge service. Even hotels that do not sell tickets to any entertainment, sightseeing, or attractions may still be a “full service” concierge

provider and provide customers with information and advice, arrange guest transportation to the airport or other locations, or direct customers to a business center or kiosk where customers can purchase tickets online. Moreover, as I stated in paragraph 13 in my April 8 affirmation, it is my understanding that CGSC does not sell Twin America vouchers in two of its hotels (the Sheraton Manhattan and the Millenium Broadway). Yet, based on my understanding, these hotels have not terminated CGSC. (Twin America vouchers are sold at these hotels through a bell man/concierge not affiliated with CGSC). In addition, both the Waldorf Astoria and the Hilton New York have their own concierges in addition to the CGSC concierge.

17. Ms. Zhang's claims in paragraphs 104 and 105 of her affidavit are surprising. As I stated in paragraph 34 of my April 8 affirmation, I do not have any investment in Highgate, the hotel defendants, or any hotel that has a contract with CGSC. Nor does Twin America, LLC, International Bus Services, Inc., CitySights Twin LLC, or any other company in which I am "affiliated."

18. Ms. Zhang fails to explain her support for her claim in paragraphs 9 and 39 of her affidavit that double decker sightseeing tours are the number one tourist activity in New York City. According to www.nycgo.com, there were 45.3 million visitors to New York City in 2009. Only 1,527,665 of these – or 3.37% – purchased a double decker tour (or a package with a double decker tour) from Twin America (or, prior to the formation of Twin America, from CitySights or Gray Line) in 2009.

19. Ms. Zhang's claim in paragraph 41 of her affidavit that a double decker tour is the only tour with hop-on/hop-off capabilities is incorrect. Other tours in New York City also offer this feature, including, for example, New York Water Taxi, *see* www.nywatertaxi.com. Other

tours, such as Revolution Rickshaws pedicab tours, *see* www.revolutionrickshaws.com, and My Kind of Town New York private vehicle tours, *see* www.mykindoftownny.com, allow a customer the “freedom to determine one’s own schedule.” And tours, such as OnBoard NY Tours, *see* www.onboardnewyorktours.com, and Marvelous Manhattan Tours, *see* www.marvelousmanhattantours.com, allow a group to stay together hopping on and off the vehicles while visiting sights. In addition, numerous tours compete at the same price point costing “about fifty dollars per person,” including several bus tours from both OnBoard NY Tours and On Location Tours, *see* www.screentours.com, and several sightseeing cruises from both Classic Harbor Line, www.sail-nyc.com, and Manhattan by Sail, www.manhattanbysail.com.

20. Claims in paragraph 59 of Ms. Zhang’s affidavit are also incorrect. As I explained in paragraph 16 in my April 8 affirmation, after its formation, Twin America did not reduce or eliminate the commission of any other third party that sold Twin America tickets. And, in response to both paragraphs 59 and 74 of Ms. Zhang’s affidavit, as I explained in paragraph 15 of that affirmation, Twin America renegotiated CGSC’s commission to 35% to make it consistent with that of other third party sellers.

21. After the formation of Twin America, LLC, when I renegotiated CGSC’s commission to the same 35% rate consistent with that of other third party sellers, Ms. Zhang told me that she would instruct her concierges to push other tours and attractions, instead of Twin America tours, to customers.

22. And when CitySights opened up its visitor center in the Times Square Madame Tussauds in 2006, Ms. Zhang asked me to meet, suggested that the CitySights visitor center

threatened CGSC's business, and told me that I should have considered opening up a visitor center with CGSC.

23. Ms. Zhang's claim on page 17, footnote 17 of her affidavit that the website, <http://www.experientheride.com/>, is not functioning is baffling. As of May 17, 2010, the website was available. Similarly, Ms. Zhang's claim on page 17, footnote 5 of her affidavit that Expedia does not sell CitySights tickets is misleading. Consumers can purchase a voucher to a Twin America tour, such as a Gray Line Downtown Loop tour, on www.expedia.com, where it is included as one of Expedia's "Tours and Sightseeing" activities.

24. In response to Ms. Zhang's incorrect assertion at paragraphs 121 and 122 that Twin America does not conduct interstate operations, Twin America holds motor passenger operating rights issued to it by the Federal Motor Carrier Safety Administration. In recent months, Twin America has used that authority to conduct interstate charter services between New York City and points outside New York state, including Atlantic City and Washington DC. In addition, Twin America's transportation tourism operations conducted in New York City are held out jointly with other interstate carriers pursuant to through-ticket arrangements.

25. Claims in paragraphs 5 and 59 of Ms. Zhang's affidavit are also incorrect. As set forth in paragraph 9 of my April 8 affirmation, since its formation, Twin America has improved service to its passengers, running more trips with fewer buses, better accommodating peak demands of any given day on any given route.

26. Claims in Ms. Zhang's affidavit at paragraphs 106, 107, and 108 are also incorrect. As I stated in paragraph 8 of my April 8 affirmation, Twin America, LLC merged (and consolidated) CitySights and Gray Line assets and operations. And while Twin America

continues to utilize both the CitySights and Gray Line brand names, all aspects of the operations – including the operation of NYCS LLC (and its trade name, City Experts NY) are now under the management of a single entity, Twin America.

27. Contrary to Ms. Zhang's claims in paragraphs 5 and 59 of her affidavit, Twin America has started to implement cross-ticketing. Specifically, Twin America has implemented a cross-ticketing arrangement in which a customer with a ticket to a Gray Line-branded tour can ride a CitySights-branded bus (and vice versa) on its Brooklyn tour and multilingual tours. Eventually, if this arrangement is successful, Twin America will extend the cross-ticketing to other tours. Moreover, during peak times, Twin America supervisors instruct passengers to board the next available bus (regardless of whether it is a CitySights-branded or a Gray Line-branded bus).

28. Paragraph 25 of Ms. Zhang's affidavit is incorrect. When CGSC began to sell CitySights tickets, CGSC – not CitySights – requested that CitySights print customized brochures with CGSC's name and contact information. I would have preferred that CGSC use the regular (non-CGSC) brochures so that customers would have CitySights's contact information and be able to directly contact CitySights, if they so chose.

29. Ms. Zhang's claims in paragraph 110 are baffling. As I stated in paragraph 31 of my April 8 affirmation, Ms. Zhang approached me about Twin America's acquisition of, or partnership with, CGSC. Indeed, since 2007, Ms. Zhang has repeatedly told me that CGSC is for sale. In July 2009, Ms. Zhang asked if Twin America would be interested in a partnership with, or acquisition of, CGSC, and told me to make her an offer. And in February 2010, Ms. Zhang again brought up the possibility of Twin America's acquisition of, or partnership with, CGSC.

but refused to provide the necessary due diligence or discuss the specific structure of the arrangement when I informed her that we could not discuss a possible partnership or acquisition in the abstract.

30. My quotation from Ms. Zhang's March 9, 2010. email was not taken out of context in my April 8 affirmation. Indeed, the email speaks for itself. *See* Exhibit A. After Paul Fruchthandler responded to this email, nobody at Twin America heard from Ms. Zhang (or anyone at CGSC) about a possible partnership or acquisition until CGSC filed this lawsuit against Twin America, a mere three days after that email.

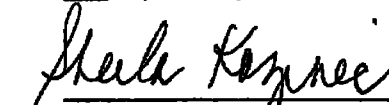
31. Claims in paragraphs 3, 28, 34, and 112 of Ms. Zhang's report that Exhibits A and B to my April 8 affirmation represent all of the hotels in New York (and the reliance on this assumption in CGSC's calculation that it has approximately 45% of the hotel rooms in New York City) are inexplicable. As the exhibits state, Exhibit A is a list of New York City hotels that sell Twin America tickets and Exhibit B is a list of examples of New York City hotels that do not sell Twin America tickets. These exhibits do not include many hotels in New York City. According to a report from Smith Travel Research, Inc., prepared for the hotel industry, there were 71,926 hotel rooms available in Manhattan in March 2010. *See* Exhibit B. This figure does not include the rooms available in many of Manhattan's numerous bed and breakfasts, hostels, and other lodging alternatives. Nor does it include hotels (or other lodging alternatives) in New York City's other boroughs. Thus, CGSC's hotels do not, as Ms. Zhang suggests in paragraph 34 of her affidavit, total "almost half" of the hotel rooms in New York City. (Moreover, the 7 hotels at issue in this litigation comprise an even smaller percentage of the hotel rooms in New York City).

32. In paragraph 36 of her affidavit, Ms. Zhang does not explain how she has computed "the yearly average" of CGSC's sales of Twin America tickets and upon what time period this alleged average is based. However, as I stated in paragraph 21 of my April 8 affirmation, from April 2009 through February 2010, CGSC sold approximately \$6,734,427 worth of Twin America tickets (based on Twin America sales by CGSC, including average commission). This is a number based on an actual 11 months of sales, not a "yearly average."



Mark Marmurstein

Subscribed before me this
18 day of May, 2010



NOTARY PUBLIC

SHEILA KAZINEO
Notary Public, State of New York
No. 01KA5080685
Qualified in Kings County
Commission Expires June 18, 2011

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

Donald M. Chiano, being duly sworn, deposes and says:

I am not a party to this action, am over 18 years of age and reside in New York, New York. On May 21, 2010, the foregoing Affirmation of Mark Marmurstein in Support of Bus Defendants' Reply in Support of Their Motion to Dismiss and Opposition to Motion for Preliminary Injunction was filed electronically and served by e-mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of this court's electronic filing system or by e-mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

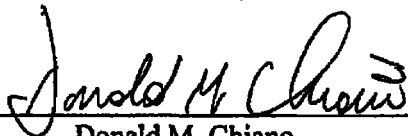
The following counsel of record were served via e-mail:

Steven J. Shore
Mark A. Berman
Gabriel Levinson
GANFER & SHORE, LLP
360 Lexington Avenue
New York, NY 10017

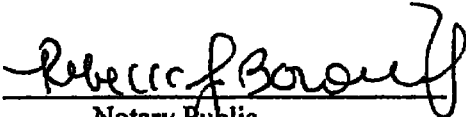
Alan D. Zuckerbrod
SILLER WILK LLP
675 Third Avenue
New York, NY 10017

Alan G. Katz
SARETSKY, KATZ, DRANOFF & GLASS LLP
475 Park Avenue South
New York, NY 10015

Richard M. Steuer
MAYER BROWN LLP
1675 Broadway
New York, NY 10019


Donald M. Chiano

Sworn to before me this
21st day of May, 2010


Notary Public

Rebecca J. Borowitz
Notary Public, State of New York
No. 01BO6044216
Qualified in New York County
Commission Expires Feb 15, 2012

EXHIBIT A

From: Paul Fruchthandler <paul@sprealtygroup.com>
Date: Tue, Mar 9, 2010 at 10:27 PM
Subject: Re: Touching Base - Meeting
To: bz@continentalguestservices.com
Cc: Paul Seeger <pseeger@citysightsny.com>

Hi Betty,
We will move along at a pace that's good for both of us.

On Tue, Mar 9, 2010 at 9:07 PM, BettyZhang
<bz@continentalguestservices.com> wrote:

> Hi Pinny,
>
> Thanks for your email. Since Paul is traveling this week, how are we going to come up
with a number by 3/15?
>
> Thanks
> Betty
>
> -----Original Message-----
> From: Paul Fruchthandler
> To: Betty Zhang
> Cc: Paul Seeger
> Cc: Paul Seeger - Yahoo
> Subject: Touching Base - Meeting
> Sent: Mar 9, 2010 8:05 PM
>
> Hi Betty,
> Paul Seeger is out of town in Germany this week, I copied him on this
> email, & we will call you on Monday to set somethink up for next week.
>
> Best Regards,
> Pinny
>
>

EXHIBIT B



United Kingdom
Blue Fin Building
110 Southwark Street
London SE1 0TA
Phone: +44 (0)20 7922 1830
Fax: +44 (0)20 7922 1831
www.strglobal.com

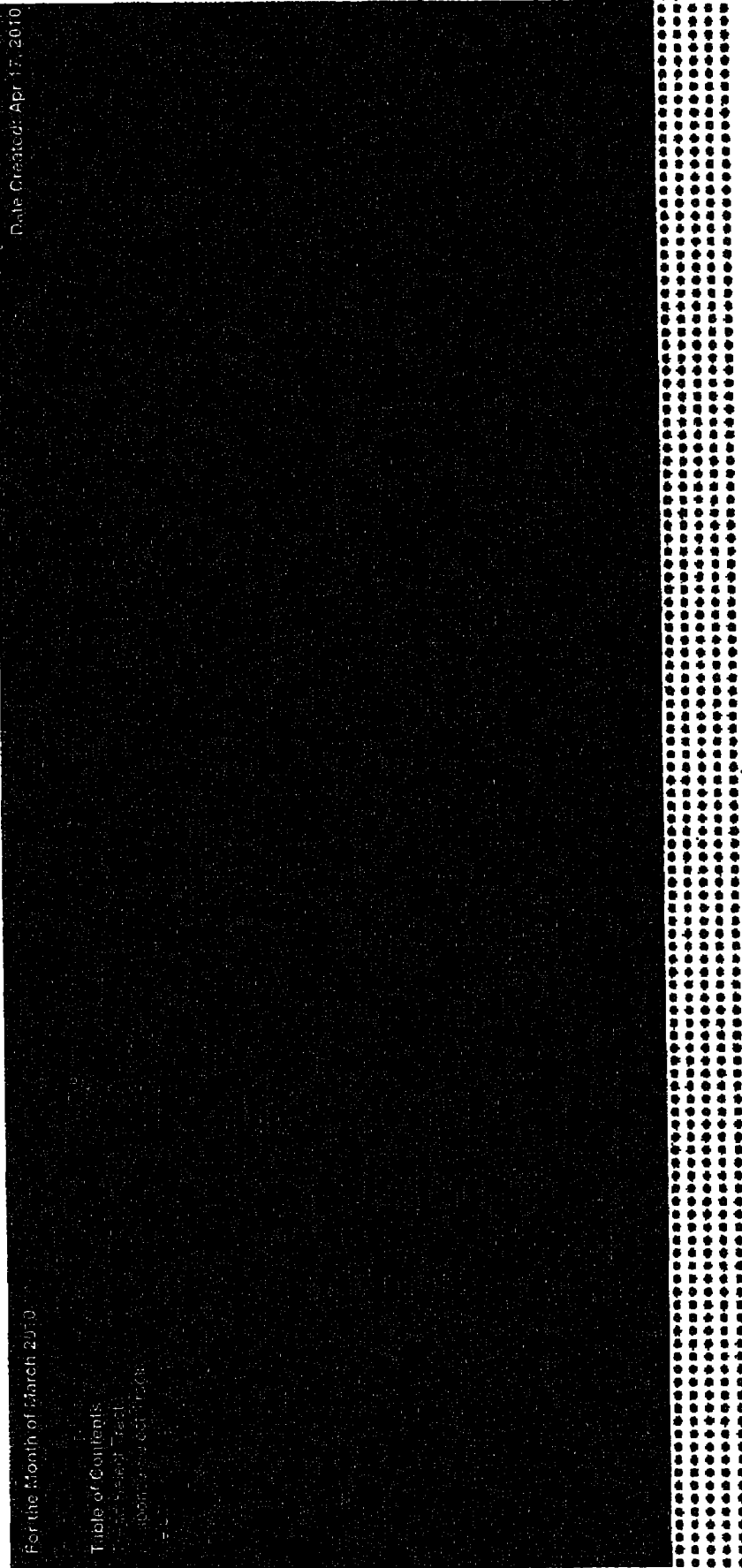
United States
735 East Main Street
Hendersonville
TN 37075
Phone: +1 (615) 824 8684
Fax: +1 (615) 824 3948
www.str.com

Highgate Holdings

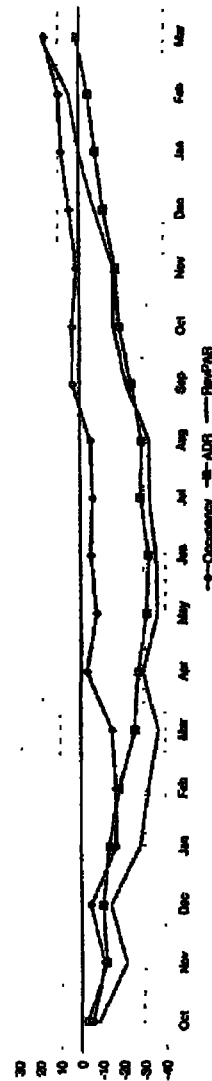
For the Month of March 2010

Table of Contents
Financial Statements
Corporate Governance

Date Created: April 7, 2010



Monthly Percent Change



Overall Percent Change

[illegible]

Revised 2018 SOUTH TRAVEL RESEARCH, INC.

Very Important Information:

Highgate Holdings
For the Month of March 2010

22060 Hilton Millenium
57670 Empire Tobacco

Highgate Holdings
For the Month of March 2010

[illegible]

Highgate Holdings
For the Month of March 2010

3226 Closed Barbican Plaza
42181 Closed Carnegie Hotel

Tab 3 - Response Select Tracts

Hipogase Holdings
For the Month of March 2010

STN	Name of Establishment	City & State	Zip Code	Alt Date	Open Date	Receipts	Chg in Res	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
9401	Closed Doublet Hotel	New York, NY	10019	Jan 1939	Jan 1939	0	Y																								
1101	Closed Heintzel Hotel Windsor	New York, NY	10019	Jan 1939	Jan 1939	0	Y																								
1943	Closed InterContinental Copley Park South	New York, NY	10019	Jan 1939	Jan 1939	0	Y																								
1107	Closed St Moritz Hotel	New York, NY	10019	Jan 1939	Jan 1939	0	Y																								
3850	Closed The Manhattan Club	New York, NY	10019	Jan 1939	Jan 1939	0	Y																								
2736	Crown Plaza Times Square Manhattan	New York, NY	10019	Dec 1939	Dec 1939	770	Y																								
5105	Da Vinci Hotel	New York, NY	10019	Jan 1942	Jan 1942	20																									
2808	Furzed Interiors	New York, NY	10019	Jan 1942	Jan 1942	272	Y																								
4488	Hempden Inn New York Manhattan Times Sq N	New York, NY	10019	Aug 1942	Aug 1942	300																									
1108	Heintzel Hotel The Park Lane	New York, NY	10019	Jan 1942	Jan 1942	587	Y																								
7849	Edison Garden Inn New York Times Square	New York, NY	10019	Oct 1945	Oct 1945	384																									
9820	Hilton New York & Towers	New York, NY	10019	Jan 1949	Jan 1949	1830	Y																								
83	Holiday Inn New York City Midtown 57th St	New York, NY	10019	Feb 1947	Feb 1947	697	Y																								
4104	Hudson Hotel	New York, NY	10019	Oct 2000	Oct 2000	831	Y																								
8950	Jamaica Essex House	New York, NY	10019	Jan 1948	Jan 1948	509	Y																								
1408	Le Meridien Palmer New York	New York, NY	10019	Jan 1981	Jan 1981	725	Y																								
34397	Mayfair On 48th Street	New York, NY	10019	Jan 1981	Jan 1981	725	Y																								
43173	Mohegan	New York, NY	10019	Jan 1981	Jan 1981	725	Y																								
10081	Novotel New York	New York, NY	10019	Jan 1984	Jan 1984	480	Y																								
8848	Park Casert	New York, NY	10019	Jan 1984	Jan 1984	934	Y																								
59418	Park Savoy Hotel	New York, NY	10019	Oct 2004	Oct 2004	210	Y																								
29200	Parkland Ocean Hotel	New York, NY	10019	May 2002	May 2002	289	Y																								
59128	Raido City Solar Hotel	New York, NY	10019	May 2002	May 2002	289	Y																								
40080	Re-Canton New York Cosmos Park	New York, NY	10019	Oct 2005	Oct 2005	80																									
59441	Re-Canton Center Hotel	New York, NY	10019	Oct 2005	Oct 2005	80																									
15497	Sallybury Hotel	New York, NY	10019	Jan 1982	Jan 1982	201	Y																								
58427	Shawton Hotel Manhattan	New York, NY	10019	Jan 1982	Jan 1982	665	Y																								
1758	Shawton Hotel New York	New York, NY	10019	Jan 1982	Jan 1982	1758	Y																								
20242	Shawton Hotel	New York, NY	10019	Jan 1982	Jan 1982	177	Y																								
20242	Shawton Hotel	New York, NY	10019	Jan 1982	Jan 1982	177	Y																								
8231	Seymour Hotel	New York, NY	10019	Oct 1982	Oct 1982	88																									
24578	Seymour Hotel	New York, NY	10019	Oct 1982	Oct 1982	88																									
15428	Seymour Hotel	New York, NY	10019	Oct 1982	Oct 1982	88																									
15428	Seymour Hotel	New York, NY	10019	Oct 1982	Oct 1982	88																									
27131	The Baitery New York Hotel	New York, NY	10019	Jan 1989	Jan 1989	178	Y																								
10001	The London NYC	New York, NY	10019	Jan 1989	Jan 1989	118	Y																								
10001	The Peninsula New York	New York, NY	10019	Jan 1989	Jan 1989	118	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								
10444	The Plaza Hotel	New York, NY	10019	Jan 1989	Jan 1989	681	Y																								

உறுப்பினர் சான்றிதழ்

[illegible]

Highgate Holdings
For the Month of March 2010

A blank row indicates insufficient data.

Source: 2010 SMITH TRAVEL RESEARCH, INC.

Tab 4 - Help

All data is processed by STR using both the current and historical sampling of hotels.

For further questions about the methodology used to produce our reports, please email into@str.com.

Average Daily Rate (ADR)

Room revenue divided by rooms sold. The currency used to express ADR is shown on each report.

Census (properties and rooms)

The number of properties and rooms that exist in our database for the area(s) or segment(s) shown on the report.

Country

A geographic area that has internationally recognized boundaries, an organized economy, and a sovereign government with external recognition.

It is typically recognized by the International Organization for Standardization (ISO).

Demand (Rooms Sold)

The number of rooms sold or rented (excludes complimentary rooms).

Exchange Rate

The factor used to convert revenue from U.S. Dollars to the local currency. The exchange rate data is obtained from Oanda.com.

Any aggregated number in the report (YTD, Running 3 month, Running 12 month) uses the exchange rate of each relative month when calculating the data.

Market

A geographic area within a country. Markets are defined by STR and STR Global.

Occupancy (Occ)

Rooms sold divided by rooms available multiplied by 100. Occupancy is always expressed as a percentage of rooms occupied.

Percent Change

Amount of growth - up, flat, or down - this period versus same period last year (month or year-to-date). Calculated as $(TY - LY) / LY * 100$.

Revenue (Room Revenue)

Total room revenue generated from the sale or rental of rooms.

Revenue Per Available Room (RevPAR)

Room revenue divided by rooms available.

Sample

The number of hotels and rooms from which data is received.

Sub-Market

A geographic sub-area within a Market. Sub-markets are defined by STR and STR Global.

Supply (Rooms Available)

The number of rooms times the number of days in the period.

Twelve Month Moving Average

The value of any given month is computed by taking the value of that month and the values of the eleven preceding months, adding them together and dividing by

WD (Weekday)

Average of Sunday through Thursday

**MAY 10, 2010 LETTER FROM TWIN AMERICA COUNSEL
TO COUNSEL FOR CGSC**

STEPTOE & JOHNSON^{LLP}

ATTORNEYS AT LAW

David H. Coburn
202.429.8063
dcoburn@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
steptoe.com

May 10, 2010

Mark Berman
GANFER & SHORE, LLP
360 Lexington Avenue
New York, NY 10017

**Re: *Continental Guest Services Corp. v. International Bus Services, Inc.*, Index
No. 600643/10**

Dear Mr. Berman:

The Surface Transportation Board ("STB") issued a Protective Order in its proceeding, *MC-F-21035, Stagecoach Group plc and Coach USA, Inc., et al. – Acquisition of Control – Twin America LLC*. Pursuant to this Protective Order, Twin America LLC (and other applicants in the STB proceeding) designated certain non-public, commercially sensitive information and documents – including Exhibit 1 to the Declaration of Dr. Kitty Kay Chan – as confidential. Although the New York Attorney General failed to redact Exhibit 1 to Dr. Chan's Declaration in its submission to the STB, the STB removed the document from its website when it was notified by Twin America LLC (and other applicants) on March 15, 2010, that the document was commercially sensitive and confidential. See attached letter of Applicants to STB.

As you know, in this litigation, Plaintiff included Exhibit 1 to Dr. Chan's Declaration as part of Exhibit C to the Affidavit of Betty Zhang submitted in support of its Memorandum of Law in (A) Further Support of its Application for a Temporary Restraining Order and Preliminary Injunction, (B) Opposition to the Motion/Cross-Motion To Dismiss Filed by Defendants, and (C) Opposition to the Motion to Stay Discovery Filed by the Bus Company Defendants.


Given that Exhibit 1 to Dr. Chan's Declaration was designated as confidential under the Protective Order issued in the STB proceeding, please take appropriate steps to keep this document confidential in this litigation, any submissions to the STB, and in any other venue. Further, please similarly retain as confidential any quotations from, or discussion of, that document, such as appear at paragraph 56 of the Zhang Affidavit. We are advising the STB of this matter and asking that they not post on the STB website the confidential material.

Mark Berman
May 10, 2010
Page 2

STEPTOE & JOHNSON ^{LLP}

Thank you for your attention to this matter.

Sincerely,


David H. Coburn

cc: Michael Cohen, Esq.
Richard Steuer, Esq.
Alan Katz, Esq.
Alan Zuckerbrod, Esq.

STEPTOE & JOHNSON LLP
ATTORNEYS AT LAW

David H. Coburn
202.429.8063
dcoburn@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
steptoe.com

March 15, 2010

VIA E-MAIL

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: MC-F-21035, Stagecoach Group plc and Coach USA, Inc., et al.— Acquisition of Control — Twin America, LLC

Dear Ms. Brown:

A Protective Order was issued in this proceeding on January 29, 2010. Under the terms of that Protective Order, Applicants were entitled to designate as confidential commercially sensitive information and documents, including commercial assessments, business plans and other confidential or proprietary information. The Protective Order further provided that designated documents would be submitted to the Board under seal and not revealed in public versions of filings made with the Board.

On February 1, 2010, the New York State Attorney General ("NYSAG"), which opposes the control Application at issue in this proceeding, submitted a Sur-Reply, coupled with a Declaration of economist Dr. Kitty Kay Chan. Attached to that Sur-Reply and Chan Declaration were several documents that Applicant Coach USA or Applicant CitySights Twin LLC had previously produced to the Attorney General in voluntary response to subpoenas served by the NYSAG on those parties in connection with its investigation. At the time that these and other documents were initially produced to the NYSAG, the respective Applicant producing the documents advised the NYSAG in writing that the documents were confidential. Further, once the Protective Order was entered in this proceeding, the Applicants promptly designated those and other documents as confidential under the Protective Order and so advised the NYSAG so that the NYSAG could take that designation into account in its then-forthcoming February 1 Sur-Reply.

Immediately upon reviewing the February 1 filing by the NYSAG, Applicants advised the Board that confidential documents were appended to the NYSAG's filing and that these documents were

Cynthia T. Brown
March 15, 2010
Page 2

described and discussed in the body of the Sur-Reply and in the Chan Declaration. Applicants promptly submitted a February 2 letter to you, with a copy to the NYSAG, identifying the confidential documents that had improperly been appended to NYSAG filing. These included Exhibit 1 to the Chan Declaration, which the February 2 letter described as containing non-public internal business information relating to the formation of Twin America. The NYSAG responded to Applicants' February 2 letter on that same day, claiming that it believed that Applicants were not entitled to claim confidentiality on documents produced previously to the NYSAG in connection with the latter's investigation.

On March 4, 2010, the Board, acting through the Director of the Office of Proceedings, issued a decision in this proceeding in which it held that the NYSAG had misinterpreted the Protective Order. The Board affirmed that the Protective Order does in fact include documents that the Applicants had previously produced to the NYSAG. Applicants were thereupon directed to advise the Attorney General by March 9 of those portions of the Attorney General's Sur-Reply that they designate as confidential under the terms of the Protective Order. The Attorney General in turn was directed to re-file its Sur-Reply by March 11, with an appropriate confidential and public (redacted) versions.

Applicants complied with the March 4 decision by submitting the attached March 9 letter to the NYSAG designating as confidential each of the documents appended to the Sur-Reply and the Chan Declaration, including Exhibit 1 to that Declaration. Applicants further supplied the NYSAG with the attached version of the Sur-Reply and the Chan Declaration that reflected the confidential documents and information in the body of those documents that should have been redacted. Applicants did so not only for the convenience of the NYSAG, but also to remove any doubt about the portions of the Sur-Reply and Chan Declaration that they deem confidential under the terms of the Protective Order.

Unfortunately, while the NYSAG redacted much of the information and all but one of the documents that Applicants had designated as confidential, its March 11 filing fails to redact one document that Applicants designated confidential, namely, Exhibit 1 to the Chan Declaration, as well as various quotations from, and descriptions of, that document found at pages 9-10 of the Sur-Reply and pages 2, 3 and 8-10 of the Chan Declaration. The document, prepared by a Coach USA official in advance of the Twin America transaction, sets forth views of potential benefits and consequence of the transaction from that Applicant's perspective. As noted in Applicants' February 2 letter addressed to you, and in Applicants' March 9 letter addressed to the NYSAG, this document is a commercially sensitive document of the sort that was, and logically would be, held as business confidence.

Dr. Robert D. Willig relied on a single statement from the document in a non-confidential Declaration filed in this proceeding on November 17, 2009. However, Dr. Willig did not attach the document to his Declaration or quote any other portion of it. Rather, he relied on a single statement in the document concerning one of the Applicant's perceived potential savings from the transaction. The fact that Dr. Willig relied on this one statement from the document does not waive the confidentiality that Applicants claim for the entire document, particularly since Applicants specifically designated this document as confidential and so advised the NYSAG. Applicants do not claim that the savings estimate

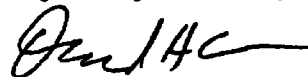
Cynthia T. Brown
March 15, 2010
Page 3

is confidential, but Applicants are well within their rights to assert that the remainder of the document (which describes several potential consequences of the transaction then under consideration) is confidential and not to have the entire document, which Applicants never disclosed in any public filing, disclosed by the NYSAG.

Moreover, if despite Applicants confidentiality designation the NYSAG believed that the document was not properly designated as confidential, the proper procedure under the Protective Order is for the NYSAG to challenge that designation at the STB under the process provided in paragraph 5 of the Protective Order. By contrast, NYSAG had no legal basis on which to make a unilateral determination that it would reveal in a public filing a document clearly designated as confidential by another party and include quotations from that document in its submission.

The NYSAG's actions therefore were in direct contravention of the Board's Protective Order and the March 4 decision. Applicants accordingly request that the Board remove from its website the current "Public Version" of the NYSAG Sur-Reply and Chan Declaration, direct the NYSAG to re-submit the public version of its filing with Exhibit 1 to the Chan Declaration removed and with all references to that document that appear in the body of the Sur-Reply and Chan Declaration redacted, consistent with the redactions shown in the attached version of those submissions that Applicants supplied to the NYSAG on March 9, 2010. Further, to the extent that the NYSAG served a copy of its public filing on persons not entitled to see confidential documents, Applicants request that the Board direct that the NYSAG advise those parties to destroy the copies of the public version that the NYSAG distributed pending submission of a corrected version of the Sur-Reply reflecting the appropriate redactions.

Respectfully submitted,



David H. Coburn
Attorneys for Applicants Stagecoach Group plc;
Stagecoach Transport Holdings plc.; SCUSI Ltd.;
Coach USA Administration, Inc.; Coach USA, Inc.;
International Bus Services, Inc.; CitySights Twin,
LLC; Mr. Zev Marmurstein; and Twin America,
LLC

cc: James Yoon, Esq.

**MAY 21, 2010 MOTION OF INTERNATIONAL BUS SERVICES, INC.
TO SEAL CERTAIN MATERIALS FILED IN
CGSC VS. INTERNATIONAL BUS SERVICES, ET AL.**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Continental Guest Services Corporation,

Plaintiff,

- against -

International Bus Services, Inc., d/b/a/ Gray
Line New York, City Sights Twin, LLC, d/b/a/
City Sights New York, Twin America, LLC,
Battery Park Hotel Management, LLC,
Hampton Inn Times Square North, Hilton
Garden Inn Times Square, New York West 35th
Street HGI, On the Ave Hotel, The Paramount
Hotel New York, Park Central Hotel (DE),
LLC, Thirty East 30th Street Owner, LLC,
Times Square Hotel Operating Lessee LLC,
Lexington Hotel, LLC, W2001 Metropolitan
Hotel Operating Lessee, LLC, and Highgate
Hotels, L.P.,

Defendants.

Index No. 600643/10

Justice: Charles E. Ramos, J.S.C.

Commercial Division of the Supreme
Court of the State of New York

**NOTICE OF DEFENDANT
INTERNATIONAL BUS SERVICES,
INC.'S MOTION TO SEAL CERTAIN
MATERIALS FILED BY PLAINTIFF**

By order of Justice Ramos, these motion
papers may not be taken apart or otherwise
tampered with

PLEASE TAKE NOTICE that, upon the annexed affirmation of S. Christopher Provenzano dated May 21, 2010, and all of the prior papers and proceedings had herein, defendant International Bus Services, Inc. ("IBS") will move the Honorable Charles E. Ramos, New York County Court House, 60 Centre Street, Room 130, New York, New York, on the 1st day of June at 9:30 a.m., or as soon thereafter as counsel may be heard, for an order placing under seal: (1) the Affidavit of Betty Zhang ("Zhang Affidavit"); and (2) Plaintiff's Memorandum of Law In (a) Further Support Of Its Application For A Temporary Restraining Order And Preliminary Injunction, (b) Opposition To The Motion/Cross-Motion To Dismiss Filed By Defendants, And (c) Opposition To The Motion To Stay Discovery Filed By The Bus Company Defendants ("Pl. Memo of Law").

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214(b), copies of your answering papers, if any, are required to be served upon the undersigned attorneys for IBS at least two days before the return date.

Dated: New York, New York
May 21, 2010

MAYER BROWN LLP

By: 

Richard M. Steuer
S. Christopher Provenzano

1675 Broadway
New York, New York 10019
Tel: (212) 506-2500
Fax: (212) 262-1910

*Attorneys for Defendant
International Bus Services, Inc.*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Continental Guest Services Corporation,

Plaintiff,

- against -

International Bus Services, Inc., d/b/a/ Gray
Line New York, City Sights Twin, LLC, d/b/a/
City Sights New York, Twin America, LLC,
Battery Park Hotel Management, LLC,
Hampton Inn Times Square North, Hilton
Garden Inn Times Square, New York West 35th
Street HGI, On the Ave Hotel, The Paramount
Hotel New York, Park Central Hotel (DE),
LLC, Thirty East 30th Street Owner, LLC,
Times Square Hotel Operating Lessee LLC,
Lexington Hotel, LLC, W2001 Metropolitan
Hotel Operating Lessee, LLC, and Highgate
Hotels, L.P.,

Defendants.

Index No. 600643/10

Justice: Charles E. Ramos, J.S.C.

Commercial Division of the Supreme
Court of the State of New York

By order of Justice Ramos, these motion
papers may not be taken apart or otherwise
tampered with

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT INTERNATIONAL BUS
SERVICES, INC.'S MOTION TO SEAL CERTAIN MATERIALS FILED BY
PLAINTIFF**

Defendant International Bus Services, Inc. ("IBS") submits this memorandum of law in support of its motion to place under seal two documents (Docket Entries 16 through 16-7 and 18) filed by Plaintiff that disclose confidential information covered by a protective Order issued by the Surface Transportation Board ("STB").¹ The documents IBS seeks to seal contain, cite, or reference a confidential document – Exhibit 1 to the Reply To Verified Statement Of Professor Robert D. Willig, by Dr. Kitty Kay Chan ("Exhibit 1") – of Coach USA, Inc, the parent of IBS,

¹ Docket Entries 16 through 16-7 contain the Affidavit of Betty Zhang ("Zhang Affidavit"), and Docket Entry 18 contains Plaintiff's Memorandum of Law In (a) Further Support Of Its Application For A Temporary Restraining Order And Preliminary Injunction, (b) Opposition To The Motion/Cross-Motion To Dismiss Filed By Defendants, And (c) Opposition To The Motion To Stay Discovery Filed By The Bus Company Defendants ("Pl. Memo of Law").

submitted in an STB proceeding, *MC-F-21035, Stagecoach Group plc and Coach USA, Inc., et al. – Acquisition of Control – Twin America LLC* (“STB Proceeding”).²

Coach designated Exhibit 1 as confidential under the Protective Order entered in the STB proceeding. The Protective Order provided that documents designated as confidential would be submitted to the STB under seal and not revealed in public versions of filings made with the STB.

Coach designated Exhibit 1 as confidential because it discloses prospective proprietary information regarding the Twin America, LLC (“Twin America”) joint venture.

Plaintiff came into possession of Exhibit 1 because, notwithstanding the Protective Order, the New York State Attorney General (“NYSAG”) included an unredacted version of the document in papers it filed with the STB. The NYSAG filing was routinely posted on the STB’s public website and stayed there until Twin America and other applicants in the STB proceeding alerted the STB and it was removed.

In the interim, Plaintiff obtained a copy of Exhibit 1 from the STB website and included a copy with the papers it filed in this Court. It is these filings that this Court should now direct the Clerk to place under seal, and ensure that they are not available through the public NYSCEF system.

It should be noted that Plaintiff also sent copies of its filings to the STB, even though it is not a party to the STB Proceeding. We have asked the STB not to post them, and to require Plaintiff to resubmit redacted versions. To date, the STB has not posted these documents on its

² Exhibit 1 to the Chan Declaration was attached as part of Exhibit C to the Zhang Affidavit filed by Plaintiff.

website and we respectfully ask this Court do the same. Otherwise, Plaintiff will have effectively circumvented the STB Protective Order.

Coach at all times viewed Exhibit 1 as confidential and took appropriate steps to safeguard its confidentiality. Coach relied on limited information contained in the document in its filings before the STB to support certain facts, but it never disclosed the full contents of the document. This limited use does not give Plaintiff license to publicly disclose a confidential document, in its entirety, or to cite portions of that document that are still subject to the STB Protective Order.³

Section 216.1 of the Uniform Rules for the New York State Trial Courts permits a Court to seal records for “good cause.” N.Y. Comp. Codes R. & Regs. tit. 22, § 216.1 (1991). Good cause may be found when the moving party demonstrates that it has a compelling interest in protecting the information and that its interest overrides the public’s interest in access to the court record. *See Mancheski, Mancheski v. Gabelli Group Capital Partners*, 39 A.D.3d 499, 502, 835 N.Y.S.2d 595, 598 (2d Dep’t 2007). “There [is] ... a compelling interest in sealing the documents containing [defendant’s] proprietary financial information because disclosure could harm the private corporation’s competitive standing.” *Id.* at 502. Indeed, “[p]roprietary information, in the nature of current or future business strategies which are closely guarded by a private corporation, is akin to a trade secret, which, if disclosed, would give a competitor an unearned advantage.” *Id.* at 503 (differentiating between historical and current or prospective proprietary information and affirming seal on current and prospective proprietary information); *Banna v. Lynch*, No. 60311107, 2007 WL 4352724 (Sup. Ct. N.Y. Co. Nov. 13, 2007) (“A

³ The Affirmation of S. Christopher Provenzano, dated May 21, supports the facts set forth in this memorandum.

finding of good cause to seal the record will be found where there is a risk of exposure of a parties' proprietary information which is included in court documents."'). This is just such information.

CONCLUSION

For the foregoing reasons, IBS respectfully requests that its motion to seal the Zhang Affidavit and Pl. Memo of Law be granted in all respects.

Dated: New York, New York

May 21, 2010

MAYER/BROWN LLP

By: 

Richard M. Steuer
S. Christopher Provenzano

1675 Broadway
New York, New York 10019
Tel: (212) 506-2500
Fax: (212) 262-1910

*Attorneys for Defendant International Bus
Services, Inc.*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Continental Guest Services Corporation,

Plaintiff,

- against -

International Bus Services, Inc., d/b/a/ Gray
Line New York, City Sights Twin, LLC, d/b/a/
City Sights New York, Twin America, LLC,
Battery Park Hotel Management, LLC,
Hampton Inn Times Square North, Hilton
Garden Inn Times Square, New York West 35th
Street HGI, On the Ave Hotel, The Paramount
Hotel New York, Park Central Hotel (DE),
LLC, Thirty East 30th Street Owner, LLC,
Times Square Hotel Operating Lessee LLC,
Lexington Hotel, LLC, W2001 Metropolitan
Hotel Operating Lessee, LLC, and Highgate
Hotels, L.P.,

Defendants.

Civil Action No.: 600643/10

**AFFIRMATION OF S.
CHRISTOPHER PROVENZANO IN
SUPPORT OF DEFENDANT
INTERNATIONAL BUS SERVICES,
INC.'S MOTION TO SEAL CERTAIN
EVIDENCE FILED BY PLAINTIFF**

By order of Justice Ramos, these motion
papers may not be taken apart or otherwise
tampered with

AFFIRMATION OF S. CHRISTOPHER PROVENZANO

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

S. Christopher Provenzano, an attorney duly admitted to practice before the Courts of the
State of New York, affirms the following statements to be true under penalty of perjury pursuant
to CPLR 2106:

1. I am associated with the law firm of Mayer Brown LLP, counsel for defendant
International Bus Services, Inc. ("IBS") in the above-captioned action, and am a member of the
bar of this Court. I submit this affirmation in support of IBS's motion to place under seal certain
documents filed by Plaintiff Continental Guest Services Corporation ("CGSC").

2. On January 29, 2010, a protective order was entered in connection with the proceeding *MC-F-21035, Stagecoach Group plc and Coach USA, Inc., et al. – Acquisition of Control – Twin America LLC*, currently before the Surface Transportation Board (“STB”). A copy of that protective order (the “Protective Order”) is attached hereto as Exhibit A.

3. In the STB proceeding, the New York State Attorney General (“NYSAG”) submitted a declaration by Dr. Kitty Kay Chan of the NYSAG’s office, titled *The Reply To Verified Statement Of Professor Robert D. Willig*, dated February 1, 2010 (the “Chan Declaration”). The Chan Declaration included, as an exhibit, a document—“Exhibit 1”—which had been produced by Coach USA, Inc. (“Coach”) and designated as confidential under the Protective Order.

4. The Protective Order provided that documents designated confidential would be submitted to the STB under seal and not disclosed in public versions of filings made with the STB. Nonetheless, it appears that Exhibit 1 was made public through no fault of IBS.

5. Specifically, the NYSAG initially failed to redact Exhibit 1 in its submission to the STB despite the fact that it had been designated confidential. The document subsequently was posted on the STB website in its unredacted form and stayed there until Twin America and other applicants in the STB proceeding alerted the STB and it was removed.

6. In the interim, CGSC appears to have obtained a copy of Exhibit 1 from the STB website.

7. Subsequently, the plaintiff in this case, CGSC, attached the Chan Declaration, including Exhibit 1, as Exhibit C to the Zhang Affidavit submitted to this Court and it became available publicly in the Court’s files and online through the NYSCEF system. It is this

confidential document, Exhibit 1, that IBS wishes to place under seal, together with documents disclosing the confidential information contained in Exhibit 1.

8. By attaching Exhibit 1 as an exhibit to a public filing in this proceeding, CGSC now seeks to disclose the document to the public and thereby frustrate the STB's process for ensuring the confidentiality of the parties' documents and information.

9. As explained in the accompanying memorandum of law, the information included in Exhibit 1 would constitute confidential business information that should be subject to sealing under section 216.1 of the Uniform Rules for the New York State Trial Courts. Coach at all times viewed this document as confidential and has taken appropriate steps to safeguard the confidential nature of the document. More important, however, is the fact that the document in question was at all times subject to the Protective Order in the STB proceeding, and CGSC should not be permitted to take advantage of oversights by the NYSAG to place in the public record information that should not have been posted in the first place.

10. IBS therefore respectfully requests that the Court enter the proposed order submitted herewith directing the Clerk to place under seal the Zhang Affidavit (Docket #16 through 16-7) and Plaintiff's Memorandum of Law In (a) Further Support Of Its Application For A Temporary Restraining Order And Preliminary Injunction, (b) Opposition To The Motion/Cross-Motion To Dismiss Filed By Defendants, And (c) Opposition To The Motion To Stay Discovery Filed By The Bus Company Defendants (Docket # 18).

Dated: New York, New York
May 21, 2010

A handwritten signature in black ink, appearing to read 'S. Christopher Provenzano', written over a horizontal line.

S. Christopher Provenzano

Exhibit A

40565
DO

SERVICE DATE - LATE RELEASE JANUARY 29, 2010

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-21035

**STAGECOACH GROUP PLC AND COACH USA, INC., ET AL.-
ACQUISITION OF CONTROL-TWIN AMERICA, LLC**

Decided: January 29, 2010

On August 19, 2009, Stagecoach Group PLC, a noncarrier, its noncarrier intermediate subsidiaries (Stagecoach Transport Holdings plc, SCUSI Ltd., Coach USA Administration, Inc.), Coach USA, Inc., International Bus Services, a motor passenger carrier (MC-155937) controlled by Coach USA, City Sights Twin, LLC, a noncarrier, and Mr. Zev Marmurstein (collectively, Applicants), filed an application under 49 U.S.C. 14303 to acquire control of Twin America, LLC when it becomes a carrier. By decision served January 12, 2010, the Board adopted a procedural schedule to allow interested persons to submit additional comments and evidence in opposition to the application. On January 27, 2010, Applicants filed a motion for protective order under 49 CFR 1104.14(b) to submit confidential documents or information in this proceeding.

On January 28, 2010, the New York State Attorney General (NYSAG) filed a reply in opposition to the motion for protective order. The NYSAG argues that the protective order would contravene section 343 of the New York General Business Law and would restrain the Attorney General from disclosing information uncovered in its ongoing investigation involving the Applicants. The NYSAG also argues that Applicants have already disclosed confidential documents and have cited from confidential documents in the pleadings before the Board and in the state investigation, thus waiving their right to claim them as covered by the protective order.

The protective order will be issued, as attached in Appendix A. First, the Board is not precluded by state law from issuing a protective order. Such an order may provide that parties who are required to disclose commercially sensitive information in connection with a proceeding must hold that information in confidence and undertake that they are willing to do so. Second, the effect of this order is prospective only. Disclosures that Applicants have made of commercially sensitive information to NYSAG before the issuance of this order lie beyond the scope of the order. Moreover, the scope of the order governs only the use of commercially sensitive information in connection with this proceeding. NYSAG has not explained, nor does the record before us indicate, how an undertaking to treat commercially sensitive information in confidence would inhibit a criminal investigation or prosecution.

Applicants submit that a protective order is necessary because the comments and reply comments may contain commercially sensitive and confidential information that could cause competitive or other harm to Applicants if they were made public.

The motion conforms with the Board's rules at 49 CFR 1104.14 governing protective orders to maintain the confidentiality of materials submitted to the Board. Issuance of the protective order will ensure that confidential information will be used solely for this proceeding and not for other purposes. Accordingly, the motion for protective order will be granted and any confidential information shall be subject to the Protective Order and Undertaking as modified in the Appendix to this decision.¹

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The Protective Order and Undertaking in the Appendix to this decision are adopted.
2. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

¹ A proposed protective order and undertaking were included with the motion.

APPENDIX A

PROTECTIVE ORDER

1. For the purposes of this Protective Order:
 - (a) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information.
 - (b) "Confidential Information" means traffic data (including but not limited to study movement sheets and databases), financial and cost data, business plans, market assessments, and other confidential or proprietary business or personal information.
 - (c) "Designated Material" means any documents designated or stamped as "CONFIDENTIAL" in accordance with paragraph 3 of this Protective Order, and any Confidential Information contained in such materials.
 - (d) These "Proceedings" consist of STB Finance Docket No. MC-F-21035, and any related proceedings before the Surface Transportation Board (Board) and any judicial review proceedings arising from STB Finance Docket No. MC-F-21035 or from any related proceedings before the Board.
2. If any party to these Proceedings determines that any part of a document it submits, of a discovery request or response, of a transcript of a deposition or hearing, or of a pleading or other paper filed or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL." Any information or documents designated or stamped as "CONFIDENTIAL" shall be handled as provided for hereafter.
3. Designated material and any copies, data or notes derived therefrom:
 - (a) Shall be used solely for the purpose of these Proceedings.
 - (b) May be disclosed only to counsel of the party requesting or receiving such material, counsel's support staff, or outside experts or consultants retained in this proceeding who have a need to know, handle, or review the material for purposes of these Proceedings, and only where such counsel, counsel's support staff, or outside expert or consultant has been given and has read a copy of this Protective Order, agrees to be bound by its terms,

and executes the attached Undertaking for Confidential Material prior to receiving access to such materials.

- (c) Must be destroyed by the requesting or receiving party at the completion of these Proceedings. However, counsel and consultants for a party are permitted to retain file copies of all pleadings which they were authorized to review under this Protective Order.
 - (d) Shall, in order to be kept confidential, be submitted to the Board under seal in a package clearly marked on the outside "Confidential Materials Subject to Protective Order." See 49 CFR 1104.14.
 - (e) Shall be clearly labeled as "CONFIDENTIAL" in any submission made to the Board.
- 4. If any party intends to use "CONFIDENTIAL" material at any hearings in these Proceedings, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such "CONFIDENTIAL" material to the Board, or the court, as appropriate, with a written request that the Board or the court: (a) restrict attendance at the hearings during discussion of such "CONFIDENTIAL" material; and (b) restrict access to the portion of the record or briefs reflecting discussion of such "CONFIDENTIAL" material in accordance with the terms of this Protective Order.
 - 5. Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenge(s).
 - 6. Except for these Proceedings, the parties agree that if a party is required by law or order of a governmental or judicial body to release any "CONFIDENTIAL" material as to which it obtained access subject to this Protective Order, the party so required shall notify the producing party in writing within 3 working days of the determination that the "CONFIDENTIAL" material, or copies or notes are to be released, or within 3 working days prior to such release, whichever is soonest, to permit the producing party the opportunity to contest the release.
 - 7. Information that is publicly available from a person with a right to disclose it shall not be subject to this Protective Order even if the same information is produced and designated as "CONFIDENTIAL" in this proceeding.
 - 8. Any party filing with the Board a "CONFIDENTIAL" pleading in this proceeding should simultaneously file a public version of the pleading.

UNDERTAKING

CONFIDENTIAL MATERIAL

I, _____, [as outside counsel or support staff] or [as outside consultant or expert] have read the Protective Order served on January 29, 2010, governing the production of confidential documents in STB MC-F-21035, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purposes other than the preparation and presentation of evidence and argument in STB Finance Docket No. MC-F-21035 or any judicial review proceeding arising herefrom. I further agree not to disclose any data or information obtained under this Protective Order to any person who has not executed an Undertaking in the form hereof. At the conclusion of this proceeding and any judicial review proceeding arising herefrom, I will promptly destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me, provided, however, that counsel and consultants may retain copies of pleadings which they were authorized to review under the Protective Order.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that parties producing confidential documents shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Continental Guest Services Corporation,

Plaintiff,

- against -

International Bus Services, Inc., d/b/a/
Gray Line New York, City Sights Twin, LLC,
d/b/a/ City Sights New York, Twin America,
LLC, Battery Park Hotel Management, LLC,
Hampton Inn Times Square North, Hilton
Garden Inn Times Square, New York West 35th
Street HGI, On the Ave Hotel, The Paramount
Hotel New York, Park Central Hotel (DE),
LLC, Thirty East 30th Street Owner, LLC,
Times Square Hotel Operating Lessee LLC,
Lexington Hotel, LLC, W2001 Metropolitan
Hotel Operating Lessee, LLC, and Highgate
Hotels, L.P.,

Defendants.

Civil Action No.: 600643/10

**[PROPOSED] ORDER GRANTING
INTERNATIONAL BUS SERVICES,
INC.'S MOTION TO SEAL CERTAIN
MATERIALS FILED BY PLAINTIFF**

By order of Justice Ramos, these motion
papers may not be taken apart or otherwise
tampered with

Defendant International Bus Services, Inc. ("IBS") having moved this Court for an order placing under seal: (1) the Affidavit of Betty Zhang ("Zhang Affidavit"); and (2) Plaintiff's Memorandum of Law In (a) Further Support Of Its Application For A Temporary Restraining Order And Preliminary Injunction, (b) Opposition To The Motion/Cross-Motion To Dismiss Filed By Defendants, And (c) Opposition To The Motion To Stay Discovery Filed By The Bus Company Defendants ("Pl. Memo of Law"),

IT IS HEREBY ORDERED that the motion is GRANTED, and the Clerk is directed to place under seal the Zhang Affidavit (Docket #16 through 16-7) and Pl. Memo of Law (Docket #18).

SO ORDERED:

Hon. Charles E. Ramos

CERTIFICATE OF SERVICE

I certify that I have this 25th day of May 2010 served a copy of the foregoing Letter of Applicants by Federal Express on the parties of record listed below and on counsel for Continental Guest Services Corporation:

U.S. Department of Transportation
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, S.E.
Washington, DC 20590

U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

U.S. Department of Transportation
Office of the General Counsel
1200 New Jersey Avenue, S.E.
Washington, DC 20590

New York State
Office of the Attorney General
The Capitol
Albany, NY 12224-0341

James Yoon
Assistant Attorney General
Antitrust Bureau
New York State Office of the Attorney
General
120 Broadway, Suite 26 C
New York, NY 10271

Karen Fleming
Transport Workers Union of America
10-20 Banta Place, Suite 118
Hackensack, NJ 07601

Mark A. Berman
Ganfer & Shore, LLP
360 Lexington Ave.,
New York, NY 10017


David H. Coburn